



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

मंगलवार, 18 अप्रैल, 2023 / 28 चैत्र, 1945

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dated the 15th March, 2023

No. Shram (A) 6-2/2020 (Awards) Dharamshala.—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is

pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court, Kangra at Dharamshala on the website of the Printing & Stationery Department, Himachal Pradesh i.e. “e-Gazette” :—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	513/16	Tara Devi	D.F.O. Suket	10-01-2023
2.	09/17	Dharam Pal	D.F.O. Suket	10-01-2023
3.	47/15	Suresh Kumar	E.E. H.P. PWD, Dharampur	10-01-2023
4.	23/18	Pal Singh	E.E.H.P.PWD, Dharampur	10-01-2023
5.	253/16	Umesh Kumar	M.D. H.P. State Co.Milk Producer	11-01-2023
6.	48/20	President/Gen. Secy.	M/S Bector Food Specilities Una	16-01-2023
7.	119/21	Raghubir Singh	M/S Haustus Biotech Una	16-01-2023
8.	238/14	Savita Kumari	The Village Education Committee Mandi	16-01-2023
9.	577/16	Darshan Singh	E.E. HPSEB, Nurpur	19-01-2023
10.	49/20	Pinku Kumar	M.D. DAV College Committee	23-01-2023
11.	146/17	Yam Chand	E.E. I&PH Sunder Nagar	23-01-2023
12.	348/15	Lok Pal	D.F.O. Suket	24-01-2023

By order,

Sd/-

AKSHAY SOOD,
Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)
(CAMP AT MANDI)**

Ref. No. : 513/2016

Date of Institution : 23-8-2016

Date of Decision : 10-01-2023

Smt. Tara Devi w/o Shri Bhola Ram, r/o Village Bhawana, P.O. Jarol, Tehsil Sunder Nagar, District Mandi, H.P. . .Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Rajat Chaudhary, Ld. Adv.(Vice)

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether alleged termination of services of Smt. Tara Devi w/o Shri Bhola Ram, r/o Village Bhawana, P.O. Jarol, Tehsil Sunder Nagar, District Mandi, H.P. during December, 2002 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., who had worked on daily wages and has raised his industrial dispute after more than 6 years vide demand notice dated 22.7.2009, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of more than 6 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is to the effect that she was engaged as daily waged beldar in 1994 in the department and her name came to be entered in the seniority list dated 1.5.1997 at serial no.125. She worked with several forest guards at several locations but her services were disengaged in December, 2002 without any notice or compensation and thus she was subjected to unfair labour practices by the department. Workmen junior to her namely S/Sh. Khub Chand, Kalu Ram, Bhawani Singh etc. were retained at the time of her verbal termination and some of these workmen have been regularized with the passage of time. The petitioner has made reference of the seniority list issued on 31.3.2003 in which as many as 386 workmen have been shown in the order of their seniority and her name figures at serial no.125, 260 workmen are junior to her. As per the petitioner, she approached the respondent in the years 2003 to 2006, 2008 and 2009 but she was not engaged whereas fresh hands were engaged and thus the respondent violated the provisions of Section 25-F, 25-G & 25-H of the Act. The petitioner claims that she is still unemployed, and therefore, her services be ordered to be re-engaged with all the service benefits.

3. The respondent has resisted and contested the claim and submitted that the petitioner was never engaged in the year 1994 as pleaded by her. As per the respondent, the petitioner was engaged as daily wager in May, 1997 and she worked intermittently upto December 2002. She was engaged to perform the work of seasonal nature and after December 2002 she left the work at her sweet will and her services were never terminated. The respondent admitted that petitioner has worked under several forest guards as pleaded by her. It is asserted that the petitioner has infact not completed 240 days in the preceding 12 calendar months before her termination. It is denied that petitioner has raised demands in the years 2003 to 2006 and 2008 & 2009. The demand was raised by her in July, 2009 after a long delay without explaining the same, and therefore, she was not entitled for any relief. It is denied that juniors were retained and fresh hands were engaged. The respondent has, therefore, prayed for the dismissal of the claim.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 21.6.2018:—

1. Whether termination of services of the petitioner by the respondents during December, 2002 is/was legal and justified as alleged? . . .OPP.

2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
4. Whether the claim petition is bad on account of delay and laches on the part of petitioner as alleged? . . .*OPR*.

Relief.

6. I have heard learned Vice counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings on the above issues are as under:—

Issue No.1 : Decided accordingly

Issue No.2 : Decided accordingly

Issue No.3 : No

Issue No.4 : Yes

Relief : Petition is partly allowed awarding lump sum compensation of ₹1,50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1, 3 & 4

8. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The mandays chart of the petitioner has been placed on the record by Shri Subhash Chand Prashar (RW1) as Ext. RW1/B. He is Divisional Forest Officer, Sunder Nagar. This mandays chart shows that petitioner has worked for 209 days in the year 2002 and for 254½ days in 2001. The petitioner has worked for 283 days in the year 2000 and 312 and 358 days in the years 1999 and 1998 respectively. Her working days for the year 1997 are not shown in this mandays chart despite of the fact that respondent has claimed that she was engaged in the year 1997. It is evident from bare perusal of the mandays chart that the petitioner has worked for full 12 months in the year 2002 and number of working days are 209 which are less than 240 days. It is clear that she has not worked for minimum 240 days in preceding 12 calendar months before her termination. It is not the case of the petitioner that she was given fictional breaks. There is also no reference received by this court in order to adjudicate the question of fictional breaks. Therefore, the court can not presume anything in favour of the petitioner and the number of working days comes to less than 240 in 12 preceding calendar months before her termination. Compliance of Section 25-F is, therefore, not attracted in this case.

10. The seniority list of the petitioner as it stood on 31.3.2003 has been tendered on the record as Ext. PW1/B and the name of the petitioner figures at serial no.125. As per this seniority list she was engaged on 1.5.1997. It is clear from this seniority list that workmen after serial no.125

have been engaged after the petitioner and the last workman was engaged in December 2002. All these workmen are thus junior to the petitioner. The petitioner has submitted that her services were terminated without following the principle of 'last come first go' and her seniority was ignored, and therefore, there is violation of Section 25-G of the Act. The respondent, on the other hand, has come up with the plea that petitioner has worked intermittently and left the work at her sweet will in December 2002 and her services were never terminated. It is thus for this court to adjudicate the question whether the petitioner has abandoned the work at her sweet will or her services were terminated by the respondent as alleged.

11. The Industrial Disputes Act is a piece of beneficial legislation and it leans in the favour of the workman. The purpose of legislation is to protect the interest of the workman. Keeping in mind, the aforesaid objective of the legislation the law settled on the point of abandonment is to the effect that the onus lies upon the employer to prove the abandonment. The employer can not lightly discharge the onus by taking the plea that a workman has left the work at his own. Since the workmen/ labourers are generally semi-literate or illiterate therefore, they are not well versed by their legal rights. Whenever a workman absents from the work, the employer can not presume that the workman has abandoned the work particularly in the situation when several other workmen were junior to the absentee workman. Once workmen junior to the absentee workman exist, therefore, the absentee workman acquires a right of 'first come last go'. In case the employer intends to retrench some of its workmen, the exercise has to be undertaken from the bottom of the seniority list towards the top, as the last one must go first. In the case in hand, once there were several other junior workmen to the petitioner, the respondent could not have presumed abandonment from the absence of the petitioner. The employer was certainly duty bound to issue a notice to the petitioner asking her to join the duties. It was the duty of the employer to apprise the petitioner of the right she has already acquired and she had to be cautioned of the fact that she shall lose the right of 'last come first go' in case, she does not join the work. In case the petitioner still did not join the work, only then plea of abandonment could have been taken and that too after recording the satisfaction to this effect on the public record. In this case, though Shri Subhash Chand Prashar has appeared as RW1 but he is absolutely silent regarding any notice issued to the petitioner at the time she had firstly absented. He had not said about any explanation of the petitioner ever called by the department in order to know the reasons of her absence. He has not said anything about the inquiry held in the reasons of her absence. When this exercise was not undertaken by the employer the plea of abandonment fails and the presumption has to be drawn in favour of the petitioner to the effect that her services were terminated in December 2002. When this presumption is raised it is clear from the seniority list that several workmen junior to her were retained and principle of 'last come first go' was thus violated and the respondent is proved to have violated the principles contained in Section 25-G of the Act. The petitioner has sworn her affidavit Ext.PW1/A and stated categorically therein about her termination and when she was subjected to cross-examination she has specifically denied that she had left the work at her own. She has denied that she was a seasonal worker. The plea of seasonal worker is not established for the simple reason that the mandays chart Ext.RW1/B shows that she has worked for full 12 months in between 1998 to 2002 though number of working days are less than 240 days after 2000 to 2002. Thus aforesaid reasons, the respondent is proved to have violated the provisions contained in Section 25-G of the Act.

12. The petitioner has pleaded in para no.3 of the claim that workmen junior to her were engaged every time after year 2003, 2004, 2005, 2006 and 2008 & 2009 and her demands for re-engagement were never considered. This plea is denied in para no.3 of the reply. The petitioner in her affidavit has also specifically stated about engagement of fresh hands after the year 2003. There is no cross-examination on this aspect. She should have been subjected to searching cross-examination on this aspect and asked to spell out the names of those workmen who were engaged after her termination. Had she named any such workman who was engaged after her termination,

the respondent should have led the evidence to the contrary on its turn. The respondent, who is a government institution is supposed to meet the plea of the petitioner specifically and the seniority lists of the workmen prepared after the year 2003 should have been placed on the record so that this court could find out whether any worker was engaged in January, 2003 and thereafter. No such seniority list was placed on the record and adverse inference has to be taken against the respondent who has failed to bring all the material on the record which would meet the allegations levelled by the petitioner. The petitioner is an illiterate rustic villagers and she is not expected to keep a detailed record regarding fresh hands engaged by the respondent after her termination. She can level the allegations and speak about the same on oath. The onus shifts upon the respondent to place on record a documentary material to dislodge her case. The seniority list of workmen is maintained in the respondent department every year and there was no difficulty for the respondent department to have placed on the record seniority lists for the years 2003, 2004 and other succeeding lists in order to apprise this court of the fact that no fresh workmen was engaged after December 2002. No such exercise was undertaken on behalf of the respondent. Being a beneficial piece of legislation, the presumption of this court can legitimately draw is that the fresh hands were engaged by the respondent after the year 2003 and in order to conceal this fact from the court the succeeding seniority lists were withheld. The petitioner has spoken on oath about the fact that fresh hands were engaged and there is neither any searching cross-examination nor any documentary material placed on the record to meet this plea, and therefore, the petitioner has been able to establish violation of Section 25-H of the Act. In case the respondent intended to engage fresh hands after termination of the services of the petitioner, it was the statutory duty of the respondent to have given preference to the petitioner and called her back by way of notice and ask her to join the work, in case, she was interested. Since no such exercise was undertaken, the violation of Section 25-H of the Act is also proved.

13. There is certainly delay in approaching the court on the part of the petitioner. The services of the petitioner were terminated in December 2002 and she has though alleged that she raised the demand in the years 2003, 2004, 2005, 2006, 2008 and 2009 but no such documents have been placed on the record. The only fact that is admitted and proved is regarding raising of the demand in the year 2009 and thus more than six years have been elapsed in between and petitioner has not taken active step to raise the demand. In this manner she is proved to have slept over her rights. Law is well settled by the Hon'ble High Court of Himachal Pradesh on this point. In **Prakash Chand vs. Executive Engineer, HPPWD, Civil Writ Petition No. 273/2019 decided on 09 April, 2019**, in which the retrenched workman had raised the dispute after nine years before this court, he was awarded compensation to the tune of 1 lakh. The Hon'ble High Court in Writ Petition was pleased to affirm the award holding that much water had already flown under the bridge and thus no error was committed by ordering the compensation in place of reinstatement. The Hon'ble High Court again in **Vyasa Devi vs. Executive Engineer, HPPWD, Civil Writ Petition No.640 of 2019 decided on 24 April, 2019** was pleased to hold in the similar manner and the award of the Tribunal whereby compensation of Rs.60,000/- was awarded in her favour was upheld as there was delay of 11 years in raising the demand by Smt. Vyasa Devi.

14. In the case in hand, taking into account the delay of more than six years, the petitioner is held not entitled to the relief of reinstatement despite of the fact that the violation of section 25-G and 25-H is established in this case. However, taking into account the facts and circumstances of the case and the length of delay occasioned in raising the demand ends of the justice shall be met, in case, a lump sum ₹1,50,000/- is awarded in favour of the petitioner as compensation in lieu of reinstatement and other consequential benefits. Petition is held to be maintainable. Issues no. 1, 3 and 4 are decided accordingly.

15. In view of the aforesaid discussions, the petitioner is held entitled to ₹1,50,000/- (Rupees One Lakh & Fifty Thousands only) in lieu of reinstatement and other consequential benefits. This issue is also decided accordingly.

RELIEF

16. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-G and 25-H of the Act but the petitioner had raised demand after a gap of more than six years and her claim for reinstatement has been thus vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in her favour but she is held entitled for compensation to the tune of ₹1,50,000/- (Rupees one lakh & fifty Thousands only), which would be paid within four months by the respondent and from the date of receipt of Award failing which the respondent shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 10th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 09/2017

Date of Institution : 05-01-2017

Date of Decision : 10-01-2023

Shri Dharam Pal s/o Shri Bhagat Ram, r/o Village Anubalh, P.O. Behli, Sub-Tehsil Nihri,
District Mandi, H.P.Petitioner.

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Rajat Chaudhary, Ld. Adv.(Vice)

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether termination of services of Shri Dharam Pal s/o Shi Bhagat Ram, r/o Village Anubalh, P.O. Behli, Sub-Tehsil Nihri, District Mandi, H.P. during February, 2011 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, in brief, is to the effect he was engaged as daily wage beldar on 1.8.2001 and worked in the aforesaid capacity till February, 2011 in continuity. His services are said to have been terminated without serving any notice upon him. As per the petitioner, such act of the respondent comes within the purview of unfair labour practices and it is an industrial dispute, cognizance whereof can be taken by this court. He moved an application in the year 2010 for re-engagement and in the year 2013 he raised the demand but nothing was done. He was given fictional breaks with a view to disturb the continuity of his services. Workmen junior to him were regularized in the year 2012. He has named such workmen in para no.4 of the petition. As per him, his name should have been in the seniority list. The grievance of the petitioner is that his services were disengaged without serving notice under Section 25-F of the Act. Apart from it, workmen junior to him were retained and fresh hands were also engaged, hence violation of the provisions contained in Sections 25-F, 25-G and 25-H of the Act also took place. The petitioner has, thus prayed for his re-engagement with all the consequential benefits and claimed that he is still unemployed and in need of work.

3. The respondent has resisted and contested the petition on the plea that the petitioner was engaged as a seasonal forestry worker in the year 2001 and he worked only for 14 days where after he left the work. He did not return at all till February, 2010 and thereafter he had worked intermittently till February, 2011. In the year 2011 he was elected as a member of Gram Panchayat, Sojha and he worked in such capacity till 2016. It is admitted that demand was raised by the petitioner in the year 2013 and it is denied that any fictional breaks were given to the petitioner by the department. The petitioner is said to have remained irregular and use to come and leave the work at his own sweet will. Neither any junior was retained and regularized nor any fresh hands was engaged after he left the work. It is submitted that petitioner is not entitled for any type of relief as he was gainfully employed as a member of Panchayat from 23.1.2011 to 22.1.2016. It is prayed that claim be dismissed.

4. The petitioner did not file rejoinder and from the pleadings of the parties and language of the reference, following issues were framed for determination on 25.10.2019:—

1. Whether termination of the services of the petitioner during February, 2011 by the respondents is/was illegal and unjustified, as alleged? . . .*OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . .*OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . .*OPR.*

Relief.

5. I have heard learned Vice counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

6. For the reasons recorded hereinafter, the findings on the above issues are as under:—

Issue No. 1 : Decided accordingly

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Relief : Petition is **dismissed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUES No.1 to 3

7. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

8. The mandays chart has been tendered on the record as Ext.RW1/B. As per this mandays chart, the petitioner has worked in August 2001 for 14 days and thereafter he worked again in the month of February, 2010 for 2 days in March for 23 days, in June, July and August 2010 for 21, 30 & 30 days respectively and in December 2010 for 26 days. He is shown to have worked for total 132 days in the year 2010. In the year 2011 January and February, the petitioner is shown to have worked for 20 and 29 days respectively and thus he worked for total 44 days in the year 2011 where after he has not worked even for single day. The petitioner has pleaded in his claim that he had worked in continuity w.e.f. 1.8.2001 to February 2011. Since the mandays chart shows entirely a different position, the onus was therefore, upon the petitioner to prove that he has worked in continuity and the mandays chart has wrongly been prepared. The petitioner has not examined any witness in support of this plea. His self serving statement is not sufficient which is in the shape of affidavit Ext. PW1/A. In case, the petitioner had worked continuously for 11 years why a wrong mandays chart shall be prepared for him by the respondent? Had the respondent prepared a false mandays chart then petitioner was duty bound to examine his family members, relatives or other co-workers in the witness box to prove that the petitioner had been working in continuity right from the year 2001 to 2011. No such evidence has been led by the petitioner. The self serving statement of the petitioner is therefore, not sufficient to prove that he had worked for 11 years in continuity.

9. The petitioner has himself pleaded in the claim that he was given fictional breaks time to time by the respondent and unfair labour practices took place with him to prevent him from completing the requisite days. It may be stated here that there is no reference regarding fictional breaks, and therefore, the court can not adjudicate a plea regarding which reference has not been received. Otherwise also, fictional breaks are given within the period of one year so as to prevent the workman from completing minimum 240 working days so that he is not able to claim benefit of Section 25-F of the Act or the benefit of regularization after his case falls in the zone of consideration for regularization in accordance with the policies of the Government from time to time. In this case, the petitioner has worked only for 14 days in August 2001 and thereafter he has not worked even for a single day for next nine years. He had reported to the work again in February 2010 and worked only for 2 days. There could not be any fictional breaks or time to time termination extending for a long period of nine years. It was duty of the petitioner to raise the demand as early as possible after his termination. He should not have slept over his right for 10

years. Such a long absence can not be termed either as fictional breaks or time to time termination as period of ten years is long period and the petitioner can not sleep over his rights. The petitioner can not take the benefit of continuity and it is not proved for the purpose of this case that the petitioner had been working since 2001. As per the mandays chart, the petitioner has worked again in February 2010, and therefore, his engagement has to be treated from February 2010 for the purpose of this case. He has worked for 132 days in the year 2010 and 44 days in the year 2011. Even if number of working days of both the years are combined together even within the period does not come to 240 working days and the petitioner has therefore, failed to make out of case for the violation of Section 25-F of the Act by the respondent.

10. So far as violation of Section 25-G is concerned, the petitioner has again failed to prove on record any prima-facie material to show that workmen junior to him were retained at the time of termination of his services. The petitioner has worked only for 14 days in August 2001. The petitioner has not named any person who was engaged after him within these 14 days. He has not said anything about the fact that any other workman was engaged within these 14 days after him and services of such a workman were retained. Therefore, the petitioner can not seek the benefit of Section 25-G of the Act w.e.f. the year 2001. The seniority list for the year 2003 has been placed on the record as Ext.PW1/B and it does not contain the name of the petitioner. Naturally his name could not have been entered in the seniority list pertaining to the year 2003 as he has worked only for 14 days in August 2001. His name at the most should have figured in the seniority list ending 31st March 2002. The grievance of the petitioner is therefore, without merits to the effect that his name has not been mentioned in the seniority list Ext.PW1/B. This seniority list shows the last engagement of the workman named Shri Jagar Nath in the year 2002. It is clear from this seniority list that no workman was engaged in August 2001 and therefore, petitioner can not contend that any workmen junior to him has been retained and violation of Section 25-G of the Act is not established by him.

11. So far as provisions of Section 25-H is concerned, the same is also not established on the record. Though seniority list Ext.PW1/B shows that workmen were engaged in September 2001 and thereafter till December 2002 but the petitioner can not get any relief. No doubt these workmen were engaged after the services of the petitioner came to an end in August 2001 itself yet the petitioner has joined the work after 10 years in February 2010 and he did not raise the demand within the reasonable period. He slept over his right for as long as 9-10 years and thereafter again without any protest joined the work in year 2010. Therefore, the seniority of the petitioner has to be counted w.e.f. February 2010. The petitioner has not claimed that any workman was engaged after February 2011, the date of his alleged termination. When such is the position it can not be said that the respondent has engaged fresh hands after February 2011 without giving the petitioner priority.

12. It is clear from a certificate proved on the record as Ext.RW1/C that the petitioner had contested the election of Ward Panch of Gram Panchayat Sojha and he remained as Ward Panch w.e.f. 23.1.2011 to 22.1.2016. Thus the petitioner can not contend that he remained unemployed and had no work to do. He is proved to have voluntarily chosen to contest the election and he was elected as member of the Panchayat who could not take any job at the same time. The petitioner, therefore, is proved to have voluntarily worked as a member of Panchayat for as many as five years and it can not be said that the petitioner was interested to work with the respondent department. The statement of the petitioner is formal in nature and is nothing but replica of the claim petition. He was subjected to cross-examination wherein he admitted that he remained Ward Panch of the Panchayat for as many as five years. However, he denied that he had left the work. It is no material to find out as to whether the petitioner has left the work at his own or his services were terminated. Even it is presumed for a while his services were terminated in February 2011 even then the petitioner has failed to prove the violation of the provisions of Section 25-F, 25-G and 25-H of the Act. The respondent, on the other hand, has examined Shri Subhash Chand Prashar,

the Divisional Forest Officer as RW1, who has sworn his affidavit Ext.RW1/A, mandays chart Ext. RW1/B and certificate of Ward Panch Ext.RW1/C. There is nothing in his cross-examination which would support the case of the petitioner. Hence, the petitioner is not entitled to any relief as claimed by him. Petition is held to be maintainable, therefore, issues no.1 to 3 are decided accordingly.

RELIEF

13. In view of my above discussions, the present claim petition fails and is accordingly dismissed. Parties are left to bear their own costs.

14. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 10th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 47/2015
Date of Institution : 23-02-2015
Date of Decision : 10-01-2023

Shri Suresh Kumar s/o Shri Duni Chand, r/o Village Lakhrehar, P.O. Kujabhal, Tehsil Sarkaghat, District Mandi, H.P. . .*Petitioner.*

Versus

The Executive Engineer, B&R Sub-Division, H.P.P.W.D., Dharampur, District Mandi, H.P. . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Vijay Kaundal, Ld. Adv.

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the industrial dispute raised by the worker Shri Suresh Kumar s/o Shri Duni Chand, r/o Village Lakhrehar, P.O. Kujabhal, Tehsil Sarkaghat, District Mandi, H.P. before the Executive Engineer, B&R Sub-Division, H.P.P.W.D., Dharampur, District Mandi, H.P. vide demand notice dated 23-03-2010 regarding his alleged illegal termination of service w.e.f. 09-07-2005 suffers from delay and laches? If not, Whether termination of the services of Shri Suresh Kumar S/O Shri Duni Chand, R/O Village Lakhrehar, P.O. Kujabhal, Tehsil Sarkaghat, District Mandi, H.P. w.e.f. 09-07-2005 by the Executive Engineer, B&R Sub-Division, H.P.P.W.D., Dharampur, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority part service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as a daily rated beldar by the respondent on 1.8.2000 in Dharampur Division of HPPWD (B&R). There were large number of workmen in this Division and the respondent intended to retrench them illegally. It is further case of the petitioner that as per the old notification dated 7.9.1992, the Labour Commissioner of Himachal Pradesh was conferred with the powers of specified authority for the purpose of Section 25-N of the Act by the Government of Himachal Pradesh. In order to succeed in the illegal designs towards the mass termination of the workmen, the powers of specified authority were got intentionally conferred upon Chief Engineer Central Zone Mandi vide notification No.Shram[a]4-1/2005 dated 14.2.2005. The Chief Engineer directed the Executive Engineer i.e. respondent to retrench the petitioner and other co-workers and at the same time gave the permission for retrenchment of the petitioner and 1086 other workmen in the capacity of the Specified Authority. Such a move was wrong and illegal on the face of it as Chief Engineer could not have become specified authority and directed the retrenchment of the workmen of his own department. Feeling aggrieved by this notification, it was assailed before the Hon'ble High Court of Himachal Pradesh on the various grounds by filing a CWP No.486/2005 and when such appointment could not be justified before the Hon'ble High Court, the notification 14.2.2005 was withdrawn and the powers were again conferred upon the Labour Commissioner within the period for four months. The respondent, however, retrenched the petitioner and other similar situated workmen on the basis of old notification of 14.2.2005 and some of retrenched workmen raised dispute before the Tribunal and Awards were passed in favour of such workmen on 30.9.2009. As many as 43 retrenched workmen joined their duties w.e.f. 16.9.2009 and the petitioner, who was senior to such workmen requested the respondent to re-engage his services but nothing was done despite of the fact that funds and work was still available. The services of the petitioner were terminated illegally on 8.7.2005. The petitioner firstly made requests to the department to re-engage his services but when he was put off on one or the other pretext, he raised the demand. He also remained ill in between. His demand was rejected on the plea that it was raised after a long time. The petitioner had to file a Civil Writ Petition before the Hon'ble High Court and the petition was allowed and thus the reference was made. The case of the petitioner is to the effect that he had worked for more than 240 days in the preceding 12 calendar months before his termination, and secondly, his termination was not as per the law. According to him, the respondent has violated the provisions of Sections 25-G and 25-H of the Act as workmen junior to him were retained and fresh hands were also engaged after his termination without giving the petitioner an opportunity and priority to return to the work. On the aforesaid averments, the petitioner has prayed for his re-engagement with all the consequential benefits including continuity in service, seniority etc.

3. The respondent has resisted and contested the petition and highlighted that the petition suffered on account of delay and laches, and was liable to be dismissed. On merits, the respondent denied the case of the petitioner and contended that the petitioner had worked intermittently w.e.f. 5/1998 to 5/1999 and thereafter left the work at his own sweet will without completing 240 days of work in any calendar year. The respondent has pleaded that the services of the petitioner were

never terminated in the year 2005 as claimed by him. The respondent further explained that on 7.7.2005 as many as 1087 workmen were retrenched after adopting all the codal formalities but the petitioner was never retrenched as he had already left the work in May, 1999. The demand is said to have been raised after more than five years and there was a delay on his part. It is submitted that for these reasons, the petitioner is not entitled for any relief and his case was entirely different from rest of the workmen. The respondent, has thus prayed for dismissal of the claim petition.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the claim and denied those made in the reply and has reasserted that he has a case in his favour.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 29.3.2016:—

1. Whether the industrial dispute raised by petitioner vide demand notice dated 23-03-2010 qua his termination of service w.e.f. 09-07-2005 by respondent suffers from the vice of delay and laches as alleged? . . .*OPP.*
2. Whether termination of the services of petitioner by the respondent w.e.f. 09-07-2005 is/was illegal and unjustified as alleged? . . .*OPP.*
3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP.*
4. Whether the claim petition is not maintainable in present form as alleged? . . .*OPR.*

Relief

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings on the above issues are as under:—

Issue No.1 : decided accordingly

Issue No.2 : decided accordingly

Issue No.3 : decided accordingly

Issue No.4 : No

Relief. : Petition is **partly allowed** per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 2

8. Both these issues are taken up together for sake of convenience and to avoid repetition of facts and evidence.

9. The documentary evidence led on the record by the petitioner has much to say against the respondent. The respondent has specifically disputed the case of the petitioner regarding the

date of retrenchment in the reply. The petitioner, on the one hand, has specifically alleged that his services were terminated on 8.7.2005, and the respondent, on the other hand, has denied this fact specifically and submitted that the petitioner has worked upto 5/1999 only and that too intermittently where after he left the work at his own sweet will and never reported again. In the aforesaid factual background, the documentary evidence led by the parties is very material. The petitioner has tendered on record copy of notice served upon the petitioner under Section 25-N of the Act. This notice Ext.PW2/A is dated 30.4.2005. The petitioner was directed to appear before the authorities on 6.5.2005 at 10:00 AM for hearing into inquiry being conducted under Section 25-N Sub Section 3 of the Act. In case the petitioner had left the work in May, 1999 as pleaded in the reply by the respondent then why this notice under Section 25-N of the Act was served upon him on 30.4.2005. There is no explanation on the record either in the pleadings or while leading evidence on the part of the respondent. The petitioner had also served the demand notice upon the respondent. This notice has been tendered on record as Ext.PW3/A and as per this notice especially para no.1, the petitioner was engaged on 1.8.2000 and his services were terminated illegally on 8.7.2005. This notice was replied by the respondent. Copy of reply is Ext. PW3/B. As per this reply, contents of the para no.1 of the notice were specifically admitted. Meaning thereby, the respondent admitted that the petitioner was engaged on 1.8.2000 and his services were illegally terminated on 8.7.2005. This is the height of casual approach adopted by the authorities of the respondent while replying the demand notice. The respondent department has tendered on record the mandays chart of the petitioner as Ext.RW1/C showing that he has worked for 170 days in 1998 and 122 days in the year 1999. This mandays chart is therefore, wrong on the face of it and contrary to the contents of the notice Ext.PW2/A and reply the demand notice Ext.PW3/B. The respondent in the pleadings as well as in the evidence has come up with an entirely different stand to the effect that the petitioner left the work in May, 1999 and thereafter did not report for the work at any point of time. These pleadings, are therefore, false on face of it against the documents prepared by the respondent.

10. When the notice under Section 25-N was specifically served upon the petitioner asking him to participate in the inquiry being held on 6.5.2005, the presumption goes that the petitioner was very much in service of the respondent on the date of notice. The contents of the reply to the demand notice specifically admitting the services of the notice under section 25-N upon the petitioner and the factum of his illegal termination w.e.f. 8.7.2005 further prove that the stand taken by the respondent in the reply is false and against the factual position and the petitioner was very much in service of the respondent till 8.7.2005.

11. When the petitioner is proved to have worked till 8.7.2005 in continuity w.e.f. the year 2001 it is but natural that he had completed 240 days of work in each calendar year and preceding his termination. The respondent has although issued the notice under Section 25-N of the Act to the petitioner and thereafter terminated his services, but to the surprise of the court the respondent has refused to acknowledge these documents and has thus not taken the stand on the basis of the same. Since it is not the case of the respondent that the petitioner was paid retrenchment compensation as required under Section 25-N of the Act therefore, it is but natural that the services of the petitioner were terminated in an illegal manner even without following the provisions of Section 25-F of the Act. The petitioner had completed 240 days of work in the preceding 12 calendar months prior to his termination and therefore, the respondent has violated the provisions contained in Section 25-F of the Act. The respondent has failed to prove that the petitioner has abandoned the work in May, 1999 for the reasons discussed hereinabove.

12. The petitioner has not only pleaded but sworn his affidavit to this effect that when his services were illegally terminated and his juniors were retained and they have been regularized with the passage of time. The petitioner was although subjected to cross-examination but these aspects were never challenged and no seniority list was placed on the record showing that these workmen

were either senior to the petitioner or no such workmen existed and fictitious names were given by the petitioner. In the absence of any such dispute raised by the respondent, onus had shifted upon the respondent to prove that while terminating the services of the petitioner workmen junior to him were not retained. It was for the respondent to place on record documentary material to dislodge his case, but the respondent has miserably failed to do so the same. The respondent has examined Shri Anil Kumar Sharma, Assistant Engineer as RW1 in the witness box who has sworn his affidavit Ext.RW1/B in accordance with the contents of reply filed by him. As aforesaid, the reply filed by the respondent is against the documentary evidence placed on the record. This Anil Kumar Sharma (RW1) has unsuccessfully denied the suggestion to the effect that the services of the petitioner were terminated on 8.7.2005. The statement of Shri Anil Kumar Sharma (RW1) can not in any manner help the respondent as there is a variation in the pleadings and the evidence led on the record. When the respondent has not refuted the evidence led by the petitioner in the shape of the content of para 3 of the claim petition, its benefits goes to the petitioner. Since the respondent was custodian of the record, the evidence could have been led on the record along with documentary material to prove that no juniors to the petitioner were retained at any point of time. Since no such evidence has been led, the statement of the petitioner made on oath in which it is specifically claimed that persons junior to him were retained by the respondent, it is therefore proved that the respondent has caused violation of the provisions contained in Section 25-G of the Act.

13. The petitioner has further come up with the plea that the respondent has caused violation of Section 25-H of the Act by engaging fresh hands but no specific evidence has been led by the petitioner on this aspect, and therefore, it can not be said that any fresh hand was engaged after the services of the petitioner were terminated. The petitioner could have specifically named those fresh hands who were engaged after his termination. Had he succeeded in doing so only then respondent was duty bound to produce on record documents prepared by the department in the due course and having made evidence. Therefore the violation of Section 25-H is not established on the record by the petitioner.

14. So far as the proceedings under Section 25-N are concerned, the respondent has itself disputed the same as it has come up with the specific case that the services of the petitioner were never terminated in the year 2005 but he had abandoned the work in May, 1999. Otherwise also, it is clear from the pleadings and evidence that the notification vide which Chief Engineer Central Zone Mandi was conferred with the powers of Specific Authority was withdrawn within the period of four months. Once the notification stand withdrawn any action taken in compliance to the notification stand annulled and terminating the services of the petitioner by way of such notice also stand nullified. Moreover, the respondent has not taken the plea that the services of the petitioner were terminated under Section 25 No of the Act.

15. Thus, for the aforesaid discussion, it is held that the services of the petitioner were illegally terminated in the year 2005. The next question to be looked into by this court is whether the case of the petitioner suffers for delay and laches as there is specific reference on this point also. Since the services of the petitioner were terminated in the year 2005 and he has served demand notice within five years i.e. on 23.03.2010 therefore, this delay is not gross and sufficient to deny the petitioner the benefit of reinstatement. At the most, he can be denied back wages for this period. Had the delay been more than five years and gross, the position would have been otherwise. The petitioner is an illiterate workman and the department had prepared several documents and taken several proceedings in between, and therefore the petitioner can be presumed to have remained confused in between regarding the fate he was supposed to meet and in a state of such confusion he could not raise the industrial dispute for around five years. Once the petitioner realized that he was not being put off on one or the other pretext, he immediately raised the demand and in this manner present reference came to be received by this court. Thus the delay in

raising the demand is not either inordinate or intentional. At the most, the monetary benefits can be denied to him on this aspect.

16. Thus the petitioner is held entitled for reinstatement in the services without back wages and his seniority shall be counted from the date of his demand notice for all intends and purposes. The respondent is directed to reinstate the petitioner with immediate effect. Issues No. 1 & 2 are decided accordingly

ISSUES No. 3 and 4

17. For the aforesaid reasons, facts and circumstances of the case it is held that the respondent has violated the provisions contained in Sections 25-F and 25-G of the Act as the services of the petitioner were wrongly and illegally terminated by the respondent, therefore, the petitioner is held entitled for the benefits of reinstatement without back wages and his seniority shall be counted from the date of his demand notice. Petition is held to be maintainable. Both these issues are decided accordingly.

RELIEF

18. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of the demand notice. He shall not be entitled for back wages. Parties are left to bear their costs.

19. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 10th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref. No. : 23/2018
Date of Institution : 28-3-2018
Date of Decision : 10-1-2023

Shri Pal Singh s/o Shri Hari Chand, r/o Village Thati, P.O. Kot, Tehsil Sarkaghat, District
Mandi, H.P.Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division, Dharampur, District Mandi, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. N.L. Kaundal, Ld. AR

For the respondent : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether termination of the services of Shri Pal Singh s/o Shri Hari Chand, r/o Village Thati, P.O. Kot, Tehsil Sarkaghat, District Mandi, H.P. by the Executive Engineer, H.P.P.W.D. Division, Dharampur, Tehsil Sarkaghat, District Mandi, H.P. from 01.09.1999 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and amount of compensation the above aggrieved workman is entitled to from the above employer?”

2. The petitioner has come up with the claim that his services were engaged by the respondent on daily waged basis on muster rolls as beldar w.e.f. 6.7.1998 and he worked as such upto 31.8.1999 when his services were terminated with other workmen without following the procedure of law. The petitioner felt aggrieved and raised the demand. The conciliation proceedings commenced before the conciliation officer and when the dispute could not be settled the matter was sent to appropriate Government on 30.6.2011. The appropriate Government refused to make the reference on the ground of delay and laches. Civil Writ Petition No.2646/2013 was filed before the Hon'ble High Court of H.P. and it met dismissal. The petitioner and others approached the Hon'ble Supreme Court by way of Special Leave Petition No.18012-18013/2017 and the same were decided on 6.11.2017 with the directions that that the respondent no.1 shall refer the matter of the petitioner to the court ignoring the objections in the matter of delay. The case of the petitioner is thus to the effect that his services were terminated without complying with the provision contained in Section 25-F of the Act as he had worked for more 240 days before his termination. Secondly, the workmen junior to him were retained and his services were terminated in violation to the provisions contained in Section 25-G. Finally, the petitioner has come up with the case that fresh hands were engaged, named whereof, have been given in para no.5 of the claim without giving priority. Name of Shri Sanjay Kumar s/o Shri Purbia Ram has been mentioned in para no.7 of the claim as one of the junior workmen whose services were regularized with the passage of time. On the aforesaid averments, the petitioner has submitted that his claim be allowed and the respondent be directed to re-engage his services with continuity, seniority and all consequential benefits.

3. The respondent has resisted and contested the petition and pleaded that the petitioner has worked as a daily waged beldar in the year 1998 and 1999 with intervals for 82½ days and 85 days respectively and he thereafter left the work at his own. It is submitted that he has never completed 240 days. No workmen junior to him was ever retained and no fresh hand has been engaged in the manner as alleged by him. It is submitted that there is delay of making the demand and the petitioner is, therefore, not entitled to any relief.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the petition and explained that he has never left the work at his own but his services were terminated.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 28-02-2020:

1. Whether the respondent has illegally and unjustifiably terminated the services of the petitioner on 01.09.1999? If so, its effect? . . .OPP.

2. Whether the claim petition is not maintainable, as alleged? . . . *OPR*.
3. Whether the claim petition is bad on account of delay and laches? . . . *OPR*.

Relief

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings of this Court on the above issues are as under:—

- Issue No.1 : Decided accordingly
- Issue No.2 : Decided accordingly
- Issue No.3 : Decided accordingly
- Relief : Petition is **partly allowed** per operative portion of the Award

REASONS FOR FINDINGS

ISSUE No.1

8. The mandays chart of the petitioner has been tendered on the record as Ext.RW1/C. As per this document, the petitioner was engaged in July, 1998 and he worked in continuity till November 1998 for total 82½ days. Thereafter he worked again in February, 1999, April, May and June, 1999 for total 85 days. Thereafter the petitioner has not worked at all. The petitioner alleged that his services were verbally terminated, whereas, the respondent has taken up the plea that petitioner has himself abandoned the work and his services were never terminated. The first and foremost question to be looked into is whether the services of the petitioner were terminated verbally as alleged by him or he has himself left the work? Once the respondent takes the plea of abandonment of work by the workman, the onus shifts upon the employer to prove that there was abandonment of the work by the petitioner. This Act is a beneficial piece of legislation, and therefore, it leans in favour of the workmen. The court has to presume the facts in favour of the workmen and the onus is always upon the employer to rebut the aforesaid presumption. The workman has to discharge the onus only to the prima-facie level. Once he succeeds in doing so, the onus is immediately shifted upon the employer to lead the evidence to the contrary. Since, the employer is the custodian of the records, it is for him to place material documents maintained during the period claimed by the workman. The petitioner in the present case has specifically alleged that his services were terminated orally in June, 1999 by the respondent. He has sworn his affidavit to this effect and has succeeded in discharging the initial onus placed upon him. The onus has thus shifted upon the respondent to prove that the petitioner has abandoned the work and his services were never terminated. The respondent has not placed on record any document to support the plea of abandonment. Abandonment is not automatic but the employer has to derive such a satisfaction after making efforts to call back the workman to work, when the work and funds are still available. In this case, the respondent has not pleaded that the work and funds had exhausted with the department. The only case of the respondent is to the effect that the petitioner had left the work at his sweet will. In case, the petitioner had absented himself from the work, it was the duty of the employer to have written a letter to the petitioner asking him to join the work as funds and work was still available. It was the duty of the employer to have called for the explanation of the petitioner for his absence, and in case, the petitioner did not report to the work despite of such

demand then the respondent could have presumed that petitioner was not willing to work. Such presumption was supposed to be recorded in writing by the respondent so that the document containing such satisfaction could be brought before the court, in case, any dispute was raised at later any point of time. In this case, the respondent has neither written a letter to the petitioner nor called for any explanation and nor has taken any steps to call him back to report for the work. The respondent has also not placed on record any documentation prepared at the time when the presumption of abandonment was drawn by the respondent. In other words, the respondent has not taken any steps to call back the petitioner. Once the respondent has not taken any steps to call back the petitioner, therefore, the plea of abandonment of the work by the petitioner is not established and the only conclusion that can be legitimately drawn is that the services of the petitioner were orally terminated in June 1999.

9. The petitioner has alleged in the claim that he has worked in continuity till his services were terminated and has completed 240 days in the preceding twelve calendar months. The respondent, on the other hand, has pleaded that the petitioner was not regular in his work and use to remain absent in between. The initial onus is to the petitioner to prove that he worked in continuity during the aforesaid period. Once the petitioner is able to discharge the onus to the prima-facie level only then the onus is shifted upon the respondent. The petitioner has not examined any witness on the record to depose about the fact that he had been seen the petitioner coming to his workplace regularly during the aforesaid period. The family members, relatives or co-worker of the petitioners could have turned as best witnesses to depose about these facts in his favour. Since none has been examined by the petitioner in support of such a plea, therefore, he has failed to prove this plea. He has not attributed any motive to the employer to prepare a fictitious mandays chart for him. In these facts and circumstances, the petitioner has failed to prove that he had worked in continuity w.e.f. July, 1998 to June, 1999. The mandays chart Ext.RW1/C can not be, therefore, disputed and has to be relied upon. As per this document, the petitioner has worked for total 82½ and 85 days in two years and if these days are combined together even then the number of working days fail to touch the benchmark of 240 minimum working days. When such is the position, the respondent was not bound to comply with the provisions contained in Section 25-F (a) of the Act, and therefore, the petitioner has failed to prove that there has been violation of Section 25-F of the Act.

10. The petitioner has contended that workmen junior to him were retained and his services were terminated orally and there is violation of Section 25-G of the Act. The petitioner in his petition has pleaded specifically in para no.4 that the junior workmen to him namely Shri Shashi Pal and Smt. Roshani Devi having been engaged on 6.4.1999 and 4.7.1999, Smt. Mamta w/o Shri Hans Raj and Shri Inder Singh s/o Shri Narayan Singh engaged on 1.1.2000 and were retained while petitioner's services were terminated. The respondent has replied these averments and contended that Shri Shashi Pal s/o Shri Bihari Lal has worked in continuity, and therefore, his services were retained, whereas, Smt. Mamta and Inder Singh were engaged on compassionate grounds and there can any parity with them and the petitioner. The mandays chart of one Shri Shashi Kant s/o Shri Bihari Lal has been tendered on record as Ext.PW1/D. There is no mandays chart of Shri Shashi Pal. It appears that the petitioner has inadvertently referred Sh. Shashi Kant as Sh. Shashi Pal as, the father's name of both these workman has been shown as Shri Bihari Lal. The services of the petitioner were disengaged in June 1999, whereas this Shashi Kant was engaged in the year 2000, and therefore, Shri Shashi Kant was not junior to the petitioner at the time of termination of the services of the petitioner. Infact Shri Shashi Kant was not engaged on the date when the services of the petitioner were terminated. There is no denial of the fact by the petitioner that Smt. Mamta and Inder Singh were not engaged on compassionate grounds. Otherwise also, the date of their engagement is also shown by the petitioner himself as 6.4.2000 and 1.1.2000 i.e. much after the services of the petitioner were already terminated. These two workmen are also not junior of the petitioner for the purpose of Section 25-G of the Act. Even Roshani Devi w/o Shri Nag Ram

is shown to have been engaged on 4.7.1999, whereas, the services of the petitioner have been terminated in June, 1999. Thus Smt. Roshani Devi was not in service while services of the petitioner were terminated. All these workmen are thus not the juniors of the petitioner, and therefore, the petitioner has failed to prove that workmen junior to him were retained. In fact it is proved from the record itself that the services of the aforesaid workmen were engaged after the services of the petitioner were already terminated.

11. The petitioner has further contended that fresh hands were engaged by the respondent after his termination without giving him priority. According to him he was never called back to work when fresh labour was required. The respondent, on the other hand, has come up with the simple plea that the petitioner has himself left the job, and therefore, there was no requirement of calling him back in service. As has already been held hereinabove, that the services of the petitioner were terminated as the respondent has failed to prove the plea of abandonment, therefore it was duty of the respondent to have called the petitioner back when fresh hands were required. The petitioner has tendered on record the mandays chart of Shri Shashi Kant s/o Shri Bihari Lal as Ext.PW1/D. He was engaged in January 2000 and he has worked upto the year 2006 as a daily wager. His services are said to have been regularized. Since the services of the petitioner are prove to have been disengaged in June 1999, therefore Shri Shashi Kant was certainly a fresh hand and the requirement of the law was to give the petitioner priority while engaging fresh hands. Since the petitioner was not called and not given priority by the respondent therefore, there is violation of Section 25-H of the Act in this case. The petitioner has sworn his affidavit Ext.PW1/A and in his cross-examination he has specifically denied that he had himself left the work. The respondent has examined Shri Anil Kumar Sharma, Assistant Engineer to the Executive Engineer as RW1. He has tendered his affidavit Ext.RW1/B. He has silent about the status of Shri Shashi Kant. He referred to one Shri Shashi Pal and stressed upon the fact that the petitioner has left the work at his own. Since it is already held that the services of the petitioner were terminated as the plea of abandonment is not established, therefore, it was the duty of the respondent to summon the petitioner and give him priority in the matter of engagement before calling for the fresh hands. Since no evidence has been led by the respondent to the effect that petitioner was called and asked to join the work before engagement of Shri Shashi Kant s/o Shri Bihari Lal, therefore violation of Section 25-H of the Act is established, and the petitioner is entitled for the relief on account of the violation of this provision by the respondent

12. For the aforesaid reasons, facts and circumstances of the case it is held that the respondent has violate the provisions contained in Section 25-H of the Act after the services of the petitioner were terminated. Issue no.1 is decided accordingly.

ISSUES No. 2 and 3

13. The respondent has come up with specific case that there is a long delay in approaching the authorities and the claim of the petitioner is bad on account of delay and laches. It is submitted that the petitioner has raised demand after as long as 10 years, and, therefore he is not entitled for any relief. It is clear from the reference itself that the petitioner has raised the demand on 13.8.2010 and the appropriate Government firstly refused to refer the dispute to the court. The petitioner felt aggrieved and CWP No. 2646/2013 was filed before the Hon'ble High Court of Himachal Pradesh and it was also dismissed on 18.6.2013. Thereafter the petitioner has approached the Hon'ble Supreme Court of India vide Civil Appeal No.18012-18013 of 2017 [Special Leave Petition (C) Nos. 30103-30114 of 2017] which was allowed with the following directions :—

“5. Therefore, these appeals are allowed with a direction to respondent No.1 that the cases of the appellants shall also be considered for reference, ignoring the objection in the matter of delay.

6. Needful be done within two months from the date of production of a copy of this judgment”.

Only thereafter the present reference was made to his court. When this reference is carefully gone it becomes clear that appropriate Government has not sought any adjudication on delay and laches part and simple reference to the effect whether the termination of the services of the petitioner was legal and justified act has been made. Once the respondents have taken up the plea of delay and laches before Conciliation Officer, it was the duty of the appropriate Government to have raised this issue for adjudication to the court. No doubt, the Hon'ble Supreme Court of India had held while deciding Civil Appeal (SLP) supra that the case of appellant be considered for reference ignoring the objection in the matter of delay, but it does mean that the appropriate Government was directed not to refer the question of delay and laches for adjudication to this court. The observations of Hon'ble Supreme Court simply means that the claim of the petitioner was not to be rejected by the appropriate Government on the ground of delay without making the reference. The intentions of the Hon'ble Supreme Court of India was to prevent the appropriate Government from deciding the matter itself and refer the same for judicial verdict. It was not the intention of the order that the issue of delay and laches be not referred to the Labour Court for adjudication. The appropriate Government did not refer the issue of delay and laches to this court for adjudication by wrongly interpreting the Orders of the Hon'ble Apex Court. This reference was not assailed by the respondent department on the plea that it was not properly framed as the question of delay and laches was not referred to the Labour Court for adjudication. Since this reference has not been assailed, it has attained finality and this court is bound to answer the same without touching the question of delay and laches.

14. It may be stated here that when the issue of delay and laches is not referred to the court by the appropriate Government, the court can not adjudicate the same and also can not base its findings on any such consideration. A similar question has arisen before the Hon'ble High Court of Himachal Pradesh in case titled as **State of H.P & Anr. Vs. Mahinder Singh reported in 2017 LLR 1256**. The State Government of H.P. had assailed the Award of the Labour court by way of writ petition on the plea that the Labour Court should have dismissed the claim petition on the ground of delay and laches as the workman had raised the dispute after a considerable time. Relying upon **Mukand Ltd. v. Mukand Staff & Officers association reported in 2004(101) FLR 219 (SC)**, it was held that the Tribunal being the creature of the Reference, can not adjudicate the matters not within the purview of the dispute actually referred to it by the order of Reference. It was further held that since the question of delay and laches was not referred to the Tribunal, therefore, the Tribunal could not have answered the Reference against the workman on the ground of delay and laches, and has thus rightly granted the relief.

15. In the case in hand also since the reference of delay and laches has not been received by this court, therefore the court can not examine the delay and laches and its impact upon the case of the petitioner. The case of the petitioner can not be dismissed or the relief can not be molded for the simple reason that there was no reference regarding delay and laches and its impact upon the petitioner.

16. Thus from the aforesaid material it is established that the services of the petitioner were terminated in June 1999 and the respondent caused violation to the provision contained in Section 25-H of the Act in the year January 2001 when the services of Shri Shashi Kant were engaged as a fresh hand without giving preference and opportunity to the petitioner. Therefore the petitioner is entitled for the relief of reinstatement. Since the petitioner has raised the demand in the year 2010, therefore, he is held not entitled to the relief of back-wages. Moreover there is no specific evidence on the record to prove that he remained without any work for long 24 years after

his termination. The petitioner is also entitled to the relief of continuity in the seniority since the year 2010 when the demand was raised by him. Both these issues are held decided accordingly.

RELIEF

17. In view of my above discussions, the claim petition succeeds in part and is partly allowed. The respondent is directed to reinstate the services of the petitioner forthwith. The petitioner is entitled for seniority and continuity in service from the date of the demand notice except back wages. Parties are left to bear their costs.

18. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 10th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM- INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP) (CAMP AT MANDI)

Ref. No. : 253/2016

Date of Institution : 03-05-2016

Date of Decision : 11-01-2023

Shri Umesh Kumar s/o Shri Devinder Kumar, r/o V.P.O. Galma, Tehsil Balh, District Mandi, H.P. . .*Petitioner.*

Versus

1. The Managing Director, the H.P. State-Co-operative Milk Producers Federation Limited, Totu, District Shimla, H.P.

2. The Manager (Production), H.P. State Co-operative Milk Producers Federation Limited, Mandi Unit at Chakkar, P.O. Gutkar, District Mandi, H.P. (Principal Employer)

3. Shri Bhupesh Janartha, M/s Shimla Cleanway & Security Services, Aditya Lodge, Sanjauli, Shimla (Contractor) . .*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the petitioner : Sh. Deepak Azad, Ld. Adv.

For the respondent(s) : Sh. Akash Sharma, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether termination of the services of Shri Umesh Kumar, s/o Shri Devinder Kumar, r/o V.P.O. Galma, Tehsil Balh, District Mandi, H.P. w.e.f. 01-09-2013 by (i) the Managing Director, the H.P. State Co-operative Milk Producers Federation Limited, Totu, Shimla, H.P. (ii) the Manager (Production), H.P. State Co-operative Milk Producers Federation Limited, Mandi Unit at Chakkar, P.O. Gutkar, District Mandi, H.P. (Principal Employer) (iii) Shri Bhupesh Janartha, M/S Shimla Cleanways & Security Services, Aditya Lodge, Sanjauli, Shimla (Contractor), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. The petitioner has pleaded in the claim that the respondents no. 1 to 3 are falling within the ambit of Section 2(j) of the Act and he was a workman under Section 2(s) of the Act. As per the petitioner his services were engaged as casual worker purely on bill basis w.e.f. November, 2010 and he was posted in refrigeration section of respondent no.2. He was paid wages as per the wages fixed by the Government of Himachal Pradesh. In the 2010 he worked as such till June 2011 and thereafter he was converted into skilled work and wages of skilled worker was paid to him by the employer. Later on, his services were transferred to the respondent no.3, the outsourcing agency and he worked through agency w.e.f. July, 2011. He had been discharging his duties to the complete satisfaction of the superiors till 31.8.2013. On 01.09.2013, when the petitioner reported for his duties as usual, it was informed by the respondent no.3 that his services were no more required and no reason were assigned for such abrupt decision and such behaviour amounts to unfair labour practices. As per the petitioner, this act of the respondent was in violation to the provisions contained in Section 25-F of the Act as he has worked for more than 240 days in the preceding 12 calendar months after his termination and junior person namely Sh. Sumit Guleria was engaged by the respondent in place of the petitioner. He has prayed for his re-engagement and all other consequential service benefits.

3. The respondents no.1 and 2 have resisted and contested the petition by taking several preliminary objections. On merits it is case of the respondent that the petitioner was engaged as contractor so that he could provide labour for preparation of khoya (milk product) and his tender was accepted being the lowest and the work was awarded to him vide letter for the period from 01.9.2010 to 31.10.2010. Other allegations are denied. It is specifically denied that the petitioner was engaged as a workman by the respondent at any point of time. It is submitted that the petitioner has no right to claim his re-engagement as he was not employee of the respondents no.1 and 2 and rather he was employee of the respondent no.3. It is submitted that the claim be dismissed.

4. The respondent no. 2 has also filed reply and has resisted and contested the claim petition on the similar grounds. As per the respondent no.3, the petitioner was a contractor and his services were utilized by respondents no.1 and 2 and the agency had no concern whatsoever with the petitioner, hence the petition was liable to be dismissed.

5. The petitioner has filed rejoinder to the reply filed by the respondents no.1 and 2 and has reaffirmed the averments so made in the petition and denied those made in the reply.

6. On the pleadings of the parties, following issues were framed for determination on 20.06.2019:—

1. Whether the termination of the services of the petitioner by the respondents w.e.f. 01.09.2013 is/was illegal and unjustified, as alleged? . . . *OPP.*
2. If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? . . . *OPP.*
3. Whether the claim petition is not maintainable, as alleged? . . . *OPR.*
4. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . . *OPR.*

Relief

7. I have heard learned counsel for the parties at length and considered the material on record.

8. For the reasons recorded hereinafter, my findings on the above issues are as under:—

Issue No. 1 : Decided accordingly

Issue No. 2 : Decided accordingly

Issue No. 3 : No

Issue No. 4 : No

Relief : Petition is partly allowed awarding lump sum compensation of Rs.1,50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

9. As per the reference received from the appropriate government, the respondents no.1 and 2 are H.P. State Cooperative Milk Producers Federation Limited being represented by Managing Director and the Manager, whereas, the respondent no.3 is an outsource agency who is supposed to provide the labour on contract basis for the period governed by a contract entered in between the outsource agency and the principle employer. The petitioner has come up with the case that he was initially engaged by the respondents no.1 since February, 2010 on bill basis and later on his services were taken through the respondent no.3 and he had thereafter been discharging his duties till 31.8.2013 with the respondents no.1 and 2 to their satisfaction. The respondents, on the other hand, have denied the allegations in toto. As per the respondents no.1 and 2, the petitioner was infact a contractor and a contract for preparation of Khoya (milk product item) was given to him through respondent no.3 and the period of contract had come to an end with the passage of time. The respondent no.3 has pleaded specifically that he had no connection with the petitioner. As per the respondent no. 3, the petitioner was himself a contractor and his services were engaged by the respondents no.1 and 2. The petitioner led his evidence and examined himself as PW1 in the witness box. He did not tender any document in support of his case except tendering his affidavit. When the respondents were asked to lead their evidence they tendered several documents without examining any witness. These documents have been marked as Mark-A1 to Mark-A2, Mark-B1 to Mark-B3, Mark-C, Mark-D1 to D2, Mark-E to Mark-E7, Mark-F and Mark-G. Though these documents have not been exhibited in evidence yet these documents can be relied upon at least against the respondents as they have themselves chosen to rely upon them. The industrial Disputes Act is a beneficial piece of legislation and strict rules of evidence are not applicable. Documents

marked during the proceedings can be looked into at least against the person, who has relied upon the same. Thus these documents can at least be read against the respondents no.1 and 2. Mark-D1 placed on the record shows that petitioner was infact given a contract for a period of two months to provide two labourers to work in refrigeration section. Mark-D 2 are terms and conditions of such a tender. Mark-E1 is quotation quoted by Shri Anil Sharma. Mark E2 is the similar quotation submitted by Shri Umesh Kumar, the present petitioner. Mark-E5 is the another quotation by another bidder. Comparative statement of the quotation has also been placed on the record and the rates quoted by the petitioner were found to be lowest, and therefore, the contract was awarded to him. Mark-F is the permission obtained to engage workers on contract by the respondents no.1 and 2. These documents show that the petitioner was never engaged as daily waged beldar by the respondents no.1 and 2 in the year 2010 as claimed by him. He had rather submitted his quotations for a work which was completed within two months and his quotations were lowest, hence the work was awarded to him. Thus the petitioner has failed to establish that he was initially engaged in the year 2010 on daily wage basis by the respondents no. 1&2.

10. There are other documents on the record which prove the case of the petitioner from a different angle. Mark-E6 is a sheet of wages for February, 2011 pertaining to the workmen working with the respondents no.1 and 2. The amount of EPF as well as basic pay and amount received by them has also been mentioned against the claimants. It is clear from this document Mark-E6 that name of petitioner had been shown at serial no.21 as Umesh Kumar s/o Shri Davinder. His basic pay was Rs.3600/- and Rs.432 was deducted towards EPF. He used to receive Rs. 3168 rupees per month. Mark-E7 is remaining part of this list and there as many as 26 workmen shown to have been working with the respondent through contractor, the respondent no. 3 in the year February 2011. Mark-G is the certificate to this effect issued on 5th March, 2011. These documents prove that the petitioner was engaged through the respondent no.3 and he was paid the wages through respondent no.3. There is another document on the record which is very important for the purpose of this case. Since it has been relied upon by the respondents, it can certainly looked into against the respondents. Mark-C is photocopy of letter written by respondent no. 3 on its letter head. This letter was written on 6.9.2013 and addressed to the petitioner. As per contents of this letter, the management of the respondents no.1 and 2 have informed the contractor that the petitioner was absenting from his work w.e.f. 1.9.2013 by way of this letter, the petitioner was directed to report to the duties within three days failing which it shall be presumed that he was not interested in the work. This letter shows malafide on the part of the respondent no. 3. The case of the petitioner is also to the effect that his services were terminated w.e.f. 31.8.2013. As per this letter, the petitioner was absenting from 1.9.2013 and he was directed to report to his work within three days failing which his services shall be treated as terminated. This is the photocopy of the letter relied upon by the respondents. Whether this letter was ever served upon the petitioner or not, no evidence to this effect has been led on the record. It appears that this letter has been prepared in order to show that the petitioner was voluntarily absenting from his duties w.e.f. 31.8.2013 and he had thus abandoned the duties despite of the information given to him with the directions to join the duties within three days. For the sake repetition, this document can safely be relied upon against the respondents as they have placed the same on record as Mark-C. On the one hand, the respondents pleaded in their replies that the petitioner was never engaged on daily wages either directly or through outsourcing agency and, on the other hand, reliance was placed on the document Mark C. It proves that at the time of leading of evidence, the respondents are trying to make out a case of abandonment of the services by the petitioner, whereas, in the pleadings an entirely different plea was taken. This Mark-C proves that the petitioner had been working with the respondents no.1 and 2 till 31.8.2013. The case of the petitioner is also to the effect that his services were terminated on 31.8.2013 and he was not permitted to work w.e.f. 1.9.2013. The documents already discussed hereinabove Mark-E6 pertains to February 2011 when the petitioner had worked with the respondents no.1 and 2 for the month of February and he was paid the wages accordingly. The petitioner was engaged through the outsource agency i.e. respondent no.3. Since the respondents have withheld all these facts in the

pleadings, therefore, the presumption goes that the petitioner had been working from February 2011 till 31.8.2013 with the respondent no. 1&2 on daily wage basis through the respondent no 3 and his services were all of sudden terminated by a verbal order. It is not understood as to why the respondents have contradicted themselves by making different kind of the pleadings by placing reliance on the documents depicting a self contradictory picture. The respondents could have pleaded the facts specifically that the petitioner was the labourer of the respondent no.3 and his services were taken on outsource basis. All these facts have been withheld by the respondents and these facts show that respondents have not come to the court with clean hands and have tried to mislead the court by taking such self contradictory pleas. The documents relied upon by the respondents support the case of the petitioner to the effect that he was engaged later on through the respondent no.3 and he had worked with the respondent till 31.8.2013 when his services were terminated all of sudden. Since the petitioner has been working from February 2011 and since the respondents have not come up with the case that the petitioner has not worked in between, therefore, it is established that the petitioner has worked for minimum 240 days in the preceding 12 calendar months before his termination. The respondents have not placed on record the agreement that was entered in between the respondents no.1 and 2 on the one side, and the respondent no.3 on the other side. No such contract has been placed on the record which would show that it was in force on 31.08.2013 when the services of the petitioner were terminated. The respondents have rather pleaded that they had no connection with the petitioner. In case such was the pleaded case what was need for the respondents to have placed on the record the wage-sheet of the petitioner for month of February 2011? What was the need for the respondents to have place on the record a letter said to have been issued to the petitioner by the respondents no.3 to the effect that he was absenting himself without any cause w.e.f. 01.09.2013 and he should report to the work within three days failing which it shall be presumed that he was not interest in the work anymore? The respondents no.1 and 2 have thus tried to conceal the true facts from the court and it is established from all these documents that the petitioner was working with the respondents no.1 and 2 w.e.f. February 2011 and since no agreement/contract has been placed on the records by the respondents having been entered in-terse, therefore, the petitioner is presumed to be the workman of the respondents no.1 and 2 as they have failed to comply with the provisions of The Contract Labour (Regulation and Abolition) Act, 1970. In such situation, the respondents no.1 and 2 are proved to have adopted a casual approach while taking the services of the petitioner through contractor. When the respondents have placed on record, the letter Mark-C, addressed by the respondent no.3 to the petitioner to the effect that respondents no.1 and 2 have been informed him that he (petitioner) was not reporting to the work w.e.f. 1.9.2013, the respondents no.1 and 2 should have placed on the record the agreement that existed between them and the contractor in order to prove that they had no personal liability and there was a contract between respondents no.1 and 2 and respondent no.3 and the petitioner was workman of the respondent no.3 and not of the respondents no.1 and 2. Since no such documents has been placed on records, therefore, ultimate presumption goes that the petitioner was workman of respondents no.1 and 2. Thus for the aforesaid reasons it is established that the services of the petitioner were terminated by the respondents no.1 and 2 on 31.8.2013 without following the procedure of law. Neither any notice was served upon him nor any compensation was paid. Rather the letter was fabricated and tendered on record as Mark-C to show that petitioner had abandoned the work. The plea of abandonment was neither taken in the pleadings nor was led any evidence on this aspect.

11. The petitioner has come up with the plea that junior workman Shri Sumit Guleria s/o Shri Shiv Singh has been engaged in his place and this is violation of Section 25-H of the Act, and therefore, he was entitled for reinstatement. The respondents have submitted that Shri Sumit Guleria has undergone training for six months before he was inducted, and therefore, there was no parity between him and the petitioner. The petitioner has not got record of Shri Sumit Guleria to summoned before the court to show that he was doing similar work. On the other hand, the respondents have come up with the plea that Shri Sumit Guleria had undergone some training and

was doing some other work and there was no parity in between the two. The petitioner in his affidavit Ext.PW1/A and averments regarding Shri Sumit Guleria has been mentioned in para no.6 of the this affidavit. Though there has been no cross-examination on this aspect yet this plea is not proved to the satisfaction of this court as the record of Shri Sumit Guleria has not been placed on the record by either the party. Therefore violation of Section 25-H of the Act is established, and the petitioner is not entitled for the relief of reinstatement on account of the violation of this provision by the respondents. Moreover, this Sumit is said to have been engaged through the respondent no. 3. Sh. Sumit is also not a party to this litigation. Issue no. 1 is decided accordingly.

ISSUES No. 2, 3 and 4

12. For the aforesaid reasons, facts and circumstances of the case it is held that the respondent has violated the provisions contained in Sections 25-F of the Act as the services of the petitioner were wrongly and illegally terminated by the respondents. It is settled law by now that in case, the violation of section 25-F alone is established, the rule is regarding the payment of compensation rather than ordering the reinstatement of the workman as the employer after reinstatement of such a workman can comply with the provisions contained in section 25- F of the Act and again retrench such a petitioner on payment of the compensation. In the case in hand, since the violation of section 25-F alone is established, the petitioner is held entitled to receive compensation. Taking into account the facts and circumstances of the case, the duration for which the petitioner has worked with the respondents, ends of justice shall be met, in case compensation of Rs. 1,50,000/- (One Lakh Fifty Thousands only) is awarded in favour of the petitioner.

13. The next question that arises for determination is as to who shall pay the compensation amount to the petitioner? The respondent no. 1 & 2 or the Respondent No.3? The respondent No. 1 & 2 have, on the one hand relied upon Mark C, a letter written by the respondent No. 3 to the petitioner, and on the other hand, have not placed any contract having been entered between them and the respondent no. 3 for the period when the services of the petitioner were terminated. When such is the position, the respondents No. 1&2 shall pay the amount of compensation to the petitioner as they have not placed on the record the contract of outsourcing entered with the respondent no. 3. It is held that the petitioner has the cause of action and the locus standi to sue. The claim petition is maintainable in the present form, hence all the issues are decided accordingly.

RELIEF

14. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F alone of the Act, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹ 1,50,000/- (Rupees One Lakh & Fifty Thousands only), which would be paid within four months by the respondents no.1 and 2, and from the date of receipt of Award failing which the respondents no.1 and 3 shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 11th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 48/2020
Date of Institution : 02-03-2020
Date of Decision : 16-01-2023

President/General Secretary, M/s Mrs. Bector Food Specialties Workers Union (INTUC)
Industrial Area Tahlwal, Tehsil Haroli, District Una, H.P. . .*Petitioner.*

Versus

1. The Managing Director, M/S Bector Food Specialties Private Limited, Theing Road, Phillaur, Punjab.
2. The General Manager, M/S Mrs. Bector Food Specialties Limited, Tahlwal, Tehsil & District Una, H.P.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For Respondent(s) : Sh. Sanjeev Gupta, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the alleged demands raised vide demand notice dated 03-01-2019 (copy enclosed) by the President/General Secretary, M/S Mrs. Bector Food Specialties Workers Union (INTUC) Industrial Area, Tahlwal, Tehsil Haroli, District Una, H.P. regarding cancellation of transfer of 5 workmen from Tahlwal to Phillaur and restoration of bus facility to the workmen before (1) the Managing Director, M/S Bector Food Specialties Private Limited, Theing Road, Phillaur Punjab (ii) the General Manager, M/S Mrs. Bector Food Specialties Limited, Tahlwal, Tehsil and District Una, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If yes, what amount of back wages, seniority, past service benefits and compensation the above workers are entitled from the above employers/Management and if not, what are its consequence?”

2. It may be stated here that the notice was issued to the petitioners for 5th December, 2022 for their appearance before the court at Dharamshala which was served upon them personally. Despite of this, the petitioners did not appear before this Court. Since there are neither pleadings nor evidence in support of the reference, the reference is answered in negative. Parties are left to bear their costs.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (HP)

Ref. No. : 119/2021
Date of Institution : 22-11-2021
Date of Decision : 16-01-2023

Shri Raghubir Singh s/o Shri Ajeet Singh, r/o Village Nangal Khurd, Tehsil Haroli, District Una, H.P. . .Petitioner.

Versus

The Occupier/Factory Manager, M/s Haustus Biotech Private Limited, 44-45, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P. . .Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For Respondent(s) : Sh. Sanjeev Gupta, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under Section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the termination of services of Shri Raghubir Singh s/o Shri Ajeet Singh, r/o Village Nangal Khurd, Tehsil Haroli, District Una, H.P. w.e.f. 01-05-2021 by the Occupier/Factory Manager, M/S Haustus Biotech Private Limited, 44-45, Industrial Area, Tahliwal, Tehsil Haroli, District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. It may be stated here that the notice was issued to the petitioner for 5th December, 2022 for his appearance before the court at Dharamshala which was served upon him personally. Despite of this, the petitioner did not appear before this Court. Since there are neither pleadings nor evidence in support of the reference, the reference is answered in negative. Parties are left to bear their costs.

3. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 238/2014
Date of Institution : 18-07-2014
Date of Decision : 16-01-2023

Smt. Savita Kumari w/o Shri Yashwant Singh, r/o Village Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. . *Petitioner.*

Versus

1. The Village Education Committee, Government Primary School, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P.

2. The Secretary-cum-Centre Head Teacher, Government Primary School Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. . *Respondents .*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : None for the petitioner
For the Respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):—

“Whether the termination of the services of Smt. Savita Kumari w/o Shri Yashwant Singh, r/o Village Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P., who was appointed as Mid Day Meal Worker w.e.f. 04.05.2010 by (1) The Village Education Committee, Government Primary School, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. (2) The Secretary-cum-Centre Head Teacher, Government Primary School, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, service benefits and amount of compensation the above aggrieved worker is entitled to?”

2. After receipt of the aforesaid reference, a Addendum reference dated 9th July, 2014 has been received from the appropriate Government which is read as under:—

In continuation to this office notification of even number dated 09-07-2014 in respect of industrial dispute of Smt. Savit Kumari w/o Shri Yashwant Singh, r/o Village Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. vs. (i) the Village Education Committee,

Government Primary School Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. (ii) the Secretary-cum-Centre Head Teacher, Government Primary School, Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P. the following party is added in the ibid reference, “(iii) Smt. Kamla Devi w/o Shri Bala Ram, r/o Village Jamsai, P.O. & Tehsil Sarkaghat, District Mandi, H.P.”

3. The case of the petitioner, in brief, is to the effect that she was engaged as Mid Day Meal Worker (Cook) in Government Primary Central School Jamsai by the respondent no.1 w.e.f. 1.9.2004 and her services were illegally terminated on 4.5.2010 despite of the fact that she has worked to the utmost satisfaction of the authorities concerned and there was nothing adverse against her. The respondent no.1 connived with respondent no.3 and the illegal termination of the petitioner took place. The further case of the petitioner is to the effect that the respondent no.1 committee was illegally formed and respondent no.3 was given undue benefits and the policy of the Government regarding termination and engagement of the Mid Day Meal Worker was flouted and the services of the petitioner were terminated in violation to the principles of Industrial Disputes Act, and therefore, the petitioner has prayed for her reinstatement along with seniority and all other benefits.

4. The respondent no. 2 has resisted and contested the petition by filing a reply, whereas, the respondent no.3 chose to proceed against *ex parte*. No specific reply was filed by the respondent no.1. As per respondent no.2, the petitioner has suppressed the actual facts from this Tribunal and she was not entitled for any relief. On merits, the appointment of the petitioner is admitted and it is explained that the services of the petitioner were terminated by the respondent no.1 by adopting the policy framed by the State Government. All the guidelines were followed and principle of ‘last come first go’ was also followed. Other allegations are denied and it is submitted that neither the committee was illegal nor any illegal act was done against the petitioner. The respondent no.3 is said to have been engaged on the same day by the same resolution and respondent no.3, was, therefore, in no way junior to the petitioner. It is further submitted that the petitioner is not entitled for any relief.

5. As the file proceeded further, the petitioner started absenting herself and notice was issued to her time and again. Lastly, the notice was served upon her for 11.01.2023 but she did not put her appearance before this court despite of the case having been called time and again. In this manner, the petitioner was proceeded against *ex parte*. As the reference could not have been disposed of in any other way except by answering the same, therefore, it is disposed off on merit on the basis of the material available on the record.

6. Since no evidence has been led by the petitioner in support of the allegations leveled by her, therefore, she is not entitled for any relief as whatever has been pleaded has to be established by leading evidence in support of the same. Pleadings are no proof of the facts, and unless the evidence is led, the court can not grant any relief to the petitioner. The respondents were not duty bound to lead evidence as the petitioner has not stood on her own legs. Since there is no evidence in support of the reference, she (petitioner) is not entitled to any relief, therefore, the reference is answered in negative. Parties are left to bear their costs.

7. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 16th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 577/2016

Date of Institution : 24.08.2015

Date of Decision : 19.01.2023

Shri Darshan Singh s/o Shri Kishan Singh, r/o Village Pandrer, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. . .Petitioner.

Versus

1. The Executive Engineer, HPSEB Division Nurpur, District Kangra, H.P.
2. The Sr. Executive Engineer Electrical HPSEB, Jawali, District Kangra, H.P. . .Respondents.

Reference under Section 10(1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri S.D. Sharma, Ld. Adv.

For the Respondent(s) : Shri Anand Sharma, Ld. Adv.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether alleged termination of services of Shri Darshan Singh s/o Shri Kishan Singh, r/o Village Pandrer, P.O. Sadwan, Tehsil Nurpur, District Kangra, H.P. w.e.f. 25-07-1991 by the Executive Engineer, HPSEB Division Nurpur, District Kangra, H.P. & the Sr. Executive Engineer Electrical Division HPSEB, Jawali, District Kangra, H.P. who has worked as beldar on daily wages basis and has raised his industrial dispute vide demand notice dated 05-03-2013 after more than 22 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period of 73 and 61 days during years 1990 and 1991 and delay of more than 22 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as daily waged beldar by the respondent Division in March, 1989 and his services were taken to install the poles and he was also deployed as Chowkidar in the office of the respondents. His services were orally terminated w.e.f. 25.7.1991 despite of the fact that he has worked to the satisfaction of his superiors and there was no complaint against him. The petitioner has completed 240 days in every calendar year before his termination and there is violation of the provisions contained in Section 25-F of the Act. Apart from it, the workmen junior to him were retained at the time of his termination, and secondly, fresh hands were also engaged after his disengagement without giving him priority, and therefore, the petitioner requested the officers of the department time and again to reinstate his

services but he was put off on one or other pretext and after expiry of long period of more than 20 years his services were not re-engaged, hence he raised the demand and the reference has been made by the appropriate Government for adjudication on failure of the conciliation proceedings. The petitioner has, thus, prayed for his reinstatement with all consequential benefits like seniority, continuity in service as well as back wages. He has also prayed for compensation.

3. The respondent has resisted and contested the claim on the plea that the petitioner has slept over his rights for more 22 years and therefore, his claim, if any, has frustrated with the passage of time. On merits, it is submitted that the petitioner was engaged on 26.02.90 and he worked till 25.4.1990 and that too with lots of breaks and he has never completed the period of 240 days in any of the calendar year. The petitioner is also said to have left the work at his own and his services were never terminated. The petitioner thereafter remained sleeping over his rights for than two decades and has raised a stale demand which the court is not bound to consider. It is denied that workmen junior to the petitioner were retained and fresh hands were also engaged. It is impressed upon that the petitioner himself had left the work, and therefore, there was no question of violation of any of the provisions of the Act, hence, the petitioner was not entitled for the relief as claimed by him.

4. The petitioner has filed rejoinder and reaffirmed the averments so made in the claim and denied those made in the reply. He has reasserted that he was engaged as daily wager in March, 1989 and worked till 25.7.1991 by completing the work of minimum 240 days in each of the calendar year before his verbal termination. He has further submitted that the delay occasioned in approaching the authorities for the reason that he was mislead and misguided by the respondents' officers/officials on one or the other pretext and he remained under an impression that his services will be re-engaged sooner or later.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 27.6.2019:—

1. Whether the termination of services of the petitioner w.e.f. 25-07-1991 by the respondents is/was illegal and unjustified, as alleged? . . .*OPP*.
2. If issue no.1 is proved in the affirmative to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the petitioner has no locus standi and cause of action to file the present case, as alleged? . . .*OPR*.
4. Whether the petitioner has not approached the Court with clean hands and has suppressed true and material facts from this Court, as alleged? . . .*OPR*.
5. Whether the claim petition is time barred, as alleged? . . .*OPR*.

Relief.

6. I have heard learned Counsel for the parties at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings on the above issues are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: No

Issue No.4	:	No
Issue No.5	:	No
Relief	:	Petition is partly allowed awarding lump compensation of Rs.75,000/-per operative portion of the Award.

REASONS FOR FINDINGS

ISSUE No.1

8. The dispute between the parties is regarding the date of termination of the services of the petitioner. The petitioner alleges that his services were terminated on 25.7.1991 by the respondents, whereas, the respondents claim that the petitioner had worked upto 25.4.1990 and thereafter left his services and there was no question of termination of the same on 25.7.1991. This factual dispute has to be resolved in the light of the oral and documentary evidence led by the parties. The petitioner has approached the respondents under RTI and asked them to furnish the details of working days. The information was supplied in the shape of document Ext. PC. It is very material document for the purpose of this case. As per this information, the petitioner has joined on 26.2.1990 and worked only for 28 days upto 25.3.1990. Thereafter he worked from 26.3.1990 to 31.3.1990 for 06 days and from 1.4.1990 to 25.4.1990 for 25 days. The petitioner thereafter worked from 26.4.1990 till 25.5.1990 for 14 days. The working days mentioned by the respondents in the information supplied under RTI are contrary to the pleadings and the subsequent mandays chart filed and relied upon by the respondents as Ext. RW1/B. As per the pleadings of the respondents, the petitioner had worked till 25.4.1990 only, whereas, under RTI, the respondents has supplied the information to the effect that the petitioner has worked upto 25.5.1990. The respondents are thus confused in themselves regarding actual working days of the petitioner. There is a variation between the pleadings and evidence led by the respondents. This information Ext. PC is very material and the note appended to it shows that the information of the complete working days was not available as per record in the office, as some of such records were impounded by the police in some other case. The respondents are thus not sure regarding actual working days of the petitioner for the reasons that the record regarding those working days was in the custody of police in some criminal case. In case, any such record was in the possession of the police, the respondents could have taken pains to inspect the records and supply the proper information under RTI to the petitioner. In case, the record was with the police, the police officers could have been summoned as witness in the court with the record so that actual position regarding the days for which the petitioner has worked could be brought to the notice of this court. Since the respondents have not supplied the entire record regarding working days of the petitioner, therefore, it can not be presumed that the petitioner has worked till 25.4.1990. Since the information supplied by the respondents shows that the record was not available after 25.04.1990, therefore, it can not be said that the petitioner has not worked after this date. When such is the position, the case of the petitioner can not be disbelieved when he has stated on oath that he has worked with the respondent without any break till 25.07.1991. The petitioner had no other mean of proving his case except by tendering his affidavit. The Industrial Disputes Act is beneficial piece of legislation and it leans favour of the workman who is presumed to be illiterate or semi illiterate and legally illiterate. Such person can not expected to produce the records as the records are always maintained by the employer. In the case in hand, the employer has not supplied the entire records but have supplied only a part of the same in which it has been clarified that the record for the rest of the years are not available as the same were lying in police custody. As aforesaid, the police records could have been inspected and only thereafter proper and complete information could have been supplied. As per the Right to Information Act, the application could have been forwarded to the police so that rest of information was supplied by the police department to the petitioner. Since nothing has been done in this case, the petitioner can not be faulted with. The petitioner has done his best by placing

the material available with him. He could have at least sought information by applying under RTI and in case information was not supplied, he could have done anything more.

9. The petitioner has sworn his affidavit Ext.PW1/A wherein he has specifically stated that he has worked till 25.7.1991. He was though subjected to cross-examination but he denied the suggestions to the contrary specifically. There is nothing in his statement that he would show that he was making a false statement. The petitioner has examined one Shri Harbans Lal as PW2, who corroborated his case. Shri Harbans Lal has sworn his affidavit Ext.PW1/A submitting therein that the services of the petitioner were terminated on 25.7.1991. This Harbans Lal was subjected to cross-examination and he has stated that he worked with the petitioner. He has not said anything which would prove that he has no information of the facts. Since he was working with the petitioner, therefore, his statement can not be disbelieved particularly when the respondents have axed their own case for the reasons discussed hereinabove.

10. The respondents have examined Shri Prakash Chandel, Executive Engineer as RW1 in the witness box and he has tendered his affidavit Ex.RW1/A showing that the petitioner has worked from 26th April, 1990 to 25th April, 1990 for a period of 59 days. He has though tendered the mandays chart Ext.RW1/B, yet he has not clarified as to why a wrong mandays chart has been supplied to the petitioner on right to information Act. The mandays chart Ext.RW1/B is contrary to the information supplied to the petitioner under RTI which has been placed on record as Ext. PC. The document Ext.RW1/B is false document when it is compared with the Ext. PC, the information supplied under RTI. This witness examined by the respondents has failed to prove the case as pleaded by the respondents. The respondents have themselves said that part of the record was not available with them. When the record was not available how the respondents could have said that the petitioner has worked only till 25.4.1990. In the aforesaid facts and circumstances, there is no reason to disbelieve the petitioner and his witness when they have said that the petitioner has worked till 25.7.1991 in continuity. In this manner the petitioner is proved to have worked for minimum 240 working days before his services were terminated orally, and therefore, there is violation of Section 25-F of the Act.

11. The petitioner has not only specifically pleaded but proved that juniors to him were retained at the time of termination of his services. The respondents have come up with the case that petitioner has left the work at his own but no evidence has been led by the respondents regarding the abandonment of the work by the petitioner. It is settled law that the plea of abandonment is plea of the fact and the entire onus upon the respondents to establish the same. It was for the respondents to have proved the plea of abandonment by leading cogent evidence which has not been done in this case. The petitioner has tendered his affidavit Ext.PW1/A and withstood the test of the cross-examination. Once the plea of abandonment fails, the court has to presume the fact that the services of the petitioner were terminated by the respondent.

12. The petitioner has specifically stated that not only the juniors were retained but fresh hands were also engaged after his termination. The onus upon the respondents to establish that nothing like this has taken place. The respondents have not placed on record any seniority list of daily wage workmen pertaining to the year 1991, 1992 and thereafter to apprise this court that no fresh hand was engaged after the termination of the services of the petitioner. No seniority list for the years 1989 and 1990 has also been placed on record to the placement of the petitioner in the seniority list of 1990. When Engineer Shri Parkash Chandel was subjected to cross-examination he stated that those persons who were continuing in services were regularized. He has not therefore, denied the suggestions specifically. Thus when no specific evidence has been led on the issues of Sections 25-G and 25-H of the Act by the respondent, the statement of the petitioner made on oath corroborated by his witness Shri Harbans Lal can not be disbelieved and it is therefore, held that the respondents have violated the provisions contained in Sections 25-G and 25-H of the Act.

13. It is also admitted on the record that the petitioner has slept over his right for more than two decades and his explanation can not be believe to the effect that he was assured time and again by the respondents and every time he waited for his reinstatement for as long 20 years. It is, therefore, held that petitioner has slept over his rights for a long period and he is not entitled for the relief of reinstatement. Law is well settled by the Hon'ble High Court of Himachal Pradesh on this point. In **Prakash Chand vs. Executive Engineer, HPPWD, Civil Writ Petition No. 273/2019 decided on 09 April, 2019**, in which the retrenched workman had raised the dispute after nine years before this court, he was awarded compensation to the tune of 1 lakh. The Hon'ble High Court in Writ Petition was pleased to affirm the award holding that much water had already flown under the bridge and thus no error was committed by ordering the compensation in place of reinstatement. The Hon'ble High Court again in **Vyasa Devi vs. Executive Engineer, HPPWD, Civil Writ Petition No.640 of 2019 decided on 24 April, 2019** was pleased to hold in the similar manner and the award of the Tribunal whereby compensation of Rs.60,000/- was awarded in her favour was upheld as there was delay of 11 years in raising the demand by Smt. Vyasa Devi.

14. In the case in hand, taking into account the delay of more than six years, the petitioner is held not entitled to the relief of reinstatement despite of the fact that the violation of sections 25-F, 25-G and 25-H are established in this case. However, taking into account the facts and circumstances of the case and the length of delay occasioned in raising the demand ends of the justice shall be met, in case, a lump sum ₹75,000/- is awarded in favour of the petitioner as compensation in lieu of reinstatement and other consequential benefits. Issue no.1 is decided accordingly.

ISSUES No. 2 to 5

15. The petitioner is proved to have not concealed the true facts. Rather the respondents have not come to the court with clean hands, hence issue no.4 is decided against the respondent. The petitioner has the locus standi and cause of action to file this claim and the reference is also not time barred. No period of limitation has been fixed by the law to file the claim. Once the reference has been received the claim has to be filed in support thereof and court can only examined the facts of the delay and take this fact into while granting the relief. The petition is not barred by limitation. In view of the aforesaid facts and circumstances of the case the petitioner is held entitled lump sum compensation of ₹75,000/- in lieu of reinstatement and other consequential services benefits, hence the issues no.2, 3 and 5 are decided accordingly.

RELIEF

16. In view of my discussion on the above issues, it is held that though there had been violation of Sections 25-F, 25-G and 25-H of the Act but the petitioner had raised demand after a gap of more than 22 years and his claim for reinstatement has been thus vitiated by delay and laches, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹75,000/- (Rupees Seventy Five Thousands only), which would be paid within four months by the respondents and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

17. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 19th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 49/2020

Date of Institution : 02-03-2020

Date of Decision : 23-01-2023

Shri Pinku Kumar s/o Shri Pune Ram, r/o Village Jhiri, P.O. Naghwan, Sub Tehsil Aut, District Mandi, H.P. . *Petitioner.*

Versus

1. The President/Managing Director, D.A.V. College Managing Committee, Chitargupta Road, Delhi-110055.

2. The President /Manager, Dr. Devi Chand D.A.V. Senior Secondary Public School, Mohal, District Kullu, H.P.

3. The Principal, Dr. Devi Chand D.A.V. Senior Secondary Public School, Mohal, District Kullu, H.P. . *Respondents .*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Shri N. L. Kaundal, Ld. AR.

: Sh. Rajat Chaudhary, Ld. Adv.

For the Respondent(s) : Already *exparte*

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether the termination of services of Shri Pinku Kumar s/o Shri Pune Ram, r/o Village Jhiri, P.O. Naghwan, Sub-Tehsil Aut, District Kullu, H.P. by the (1) The President/Managing Director, D.A.V. College Managing Committee, Chitargupta Road, Delhi-110055 (2) The President/Manager, Dr. Devi Chand D.A.V. Senior Secondary Public School, Mohal, District Kullu, H.P. & (3) The Principal, Dr. Devi Chand D.A.V. Senior Secondary Public School, Mohal, District Kullu, H.P. w.e.f. 01.04.2019 without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employers?”

2. The case of the petitioner, in brief, is to the effect that he was engaged as a sweeper (Class-IV) w.e.f 2.5.2011 by the respondent no.3 after taking approval from the respondent no.1 on fixed monthly wages. All the codal formalities were completed at the time of his engagement and he worked for more than 240 days every year to the complete satisfaction of his superiors. The respondent no.1 had its own bye laws, rules pay structure with respect to teaching and non teaching staff, and it had its own policies with respect to the regularization of its workers. The petitioner

upon completion of seven years of his continuous service requested the respondents to regularize his services as per the prevalent policies, but no action was taken by the respondents. The petitioner thereafter represented the respondent no.3 but no action was again taken feeling compelled, the petitioner served a demand notice upon the respondents and the matter was dealt with by Labour Officer, Kullu and during conciliation proceedings reply was filed by respondent no.3 and the conciliation were in progress when the services of the petitioner were terminated by the respondents orally without serving him a show cause notice or conducting any inquiry which amounts to unfair labour practices. No permission was taken from Labour Officer and violation of Section 33-A and 33-C(2) also took place. Juniors to the petitioner were retained and violation of Section 25-G also took place. The factum of termination of the services of the petitioner was brought to the notice of the conciliation officer, who forwarded the report under section 12 (4) of the Act to the appropriate government and the appropriate Government made the reference to this court to examine the legality of the termination of the petitioner along with his claim for regularization, seniority, continuity and other consequential benefits. On the aforesaid averments, the petitioner has prayed for his reinstatement with back wages, past service benefits, seniority and regularization.

3. Both the parties were summoned on receipt of the reference and the petitioner appeared through his advocate whereas, none appeared for the respondent no.2, hence it was ordered to be proceeded against *ex parte* on 30.10.2020, none appeared on behalf of the respondent no.3 and he was also proceeded against *ex parte* on 8.3.2020. The respondent no.1 was served through RAD and the consignment delivery report was obtained and it was found that the parcel containing the notice was successfully delivered well before the date fixed for appearance. Despite of this, none appeared on behalf of respondent no.1 and respondent no.1 was also proceeded against *ex parte*. In this manner, all the respondents are *ex parte* in this claim petition.

4. The petitioner led *ex parte* evidence and tendered his affidavit Ext.PW1/A and Ext.PW1/A1. Two affidavits were filed for the reason that claim was inadvertently not filed earlier and evidence was led in the shape of the affidavit. When this fact was noticed, the mistake was rectified by filing the claim and thereafter another affidavit was filed and documents have also been tendered on the record by the petitioner in support of his case.

5. The respondents have very well participated during the conciliation proceedings and since the matter could not be resolved amicably, therefore, the reference was received by this court. It appears from the language of the reference that initially the conciliation regarding regularization were taking place and in the meanwhile services of the petitioner were terminated, and therefore, both these issues were taken up together in the demand notice regarding regularization, copy whereof has been tendered on the record as Ext.PW1/B. Reply to this demand notice is also on the record as Ext.PW1/C. It appears from these documents that the reference was made on the old demand notice and no new demand was raised perhaps for the reason that proceedings regarding regularization were pending before Labour Officer when the services of the petitioner were finally terminated and when this fact was brought to the notice of Conciliation Officer therefore, both the questions were referred to this court for answer.

6. In order to prove the allegations, the petitioner has tendered his affidavit Ext.PW1/A1, which is replica of the claim petition and there is nothing new in the same. Another affidavit to the similar effect has been filed as Ext. PW1/A. The petitioner has tendered on record the demand notice dated 16.8.2018 Ext.PW1/B whereby the petitioner has made a vague reference of policies of the respondent regarding regularization of its employees. Reply to the notice has been tendered as Ext.PW1/C and in this reply the respondents has come up with the plea that the appointment of the petitioner was purely on *ad hoc* basis and the relieving letter was issued to him on 31.3.2018. It is further mentioned in the same that appointment letters were issued to the petitioner time to time

again and he was paid Rs.6300/- per month i.e. minimum wages. It is also submitted that since the petitioner was not appointed in accordance with prescribed procedure, therefore, he was not entitled for regularization as per judgments of the various courts. The petitioner has also tendered on record proceedings of some meeting of adhoc selection committee Ext.PW1/D which has not co-relation of the petitioner. The petitioner has tendered on record his salary slips Ext.PW1/E (six pages) of various months. This evidence has gone also unrebutted and unchallenged and it is an admitted case of the respondents in reply to the notice that petitioner was engaged from the date mentioned by him. The only defence taken by the respondents is that the petitioner was engaged on adhoc basis after giving him appointment letter from one year to another year. The question is to be looked into by this court whether the petitioner is proved to be a contract employee appointed for a fixed tenure or he is a daily wage worker falling under the Act. Although, it is an admitted fact that consolidated wages were paid to the petitioner yet it does not mean that the petitioner is not a daily wager. The mode of payment of wages is not very material to determine whether the petitioner is a daily wager or was engaged on contract. In order to prove that the petitioner was engaged for a fixed period of year to year it was for the respondents to have placed on the record agreements having been entered between the petitioner and the respondents every year. Had there been such agreements, the court could have presumed that the petitioner was engaged for fixed term and petitioner had agreed to abide by the terms and conditions of the agreement, and therefore, he was not a daily wager. As aforesaid, the respondents have chosen proceeded ex parte and they have not placed on record any material in support of their plea. In such situation when the petitioner has worked in continuity w.e.f. year 2011 to 2018 it is to be presumed that he was a daily wager worker and has worked for minimum 240 working days every year and when his services were orally terminated he had completed 240 days work in preceding 12 calendar months. When such is the situation, the services of the petitioner could not have been terminated by the respondents orally without complying with the provisions of Section 25-F of the Act. So far as the DAV school concerned, it is settled law that schools are covered under the definition of industry whenever the question of engagement of class-IV workers like drivers, sweeper, peons etc. is involved. When school is an industry, therefore, Industrial Disputes Act is fully applicable and the petitioner has to be treated as daily wager for all intents and purposes in the absence of any agreement placed on the record by the respondents to show that engagement of the petitioner was for a fixed term and his disengagement on completion of term did not amount to retrenchment. Since no material has been placed on the record to this effect, it is therefore held that the services of the petitioner were retrenched without following the provisions contained in Section 25-F of the Act and therefore, there was violation of Section 25-F of the Act.

7. The petitioner although alleged that juniors were retained but he has taken no pains to prove this fact. The petitioner was not helpless as he could have summoned the staff of the school during his evidence with the records so that this court could be apprised of the actual state of things. The respondents could though remain ex parte when they were asked to contest the case but they could not have avoided the summons of the court when they were asked to produce particular record before the court in evidence. The presence of such witnesses could be procured even by coercive methods by issuing bailable and non-bailable warrants by the court. Since the petitioner has not taken the pains to get any of the staff of the school summoned during evidence to prove that workmen junior to him were retained, therefore, it can not be held that any junior was retained. The petitioner has not even named any sweeper who was junior to him and was still working. Therefore violation of Section 25-G is not established.

8. The next question arising for consideration is whether the petitioner was liable to be considered for regularization of his services on completion of seven years or not. It may be stated here that DAV school is a private school and it has its own bye laws and policies as has been said by the petitioner himself. It was the duty of the petitioner to have placed on the record those bye laws and policies of the school to point out as to how his case for regularization could have fallen

under any of those provisions. As aforesaid, the petitioner has neither placed on record any such bye laws, and policies of the school nor he has got any witness summoned during evidence to cause production of such documents. There is no document placed on the record from which this court could infer that there was a policy in the school regarding regularization of the sweepers, peons etc. When no such policies have been placed on the record, the court can not proceed to grant the relief regarding consideration of the case of the petitioner for regularization.

9. It is also clear from the discussions hereinabove that there is violation of Section 25-F of the Act and violation of Section 25-G has not established. In this situation in case the court orders reinstatement of the petitioner, the respondents still have an option to terminate the services of the petitioner after serving a notice upon him as there is no violation of Sections 25-G and 25-H of the Act. The respondents thus have an option to pay him compensation after complying with the provisions of Section 25-F of the Act. In case, this court orders reinstatement of the petitioner, the respondents shall comply with the provisions contained in Section 25-F of the Act and terminate his services again and the order of the court shall become infructuous. The law on this point is well settled to the effect that when there is violation of Section 25-F of the Act only, the courts are not bound to order the reinstatement of the workman. Only appropriate relief, the court can grant in such a situation is to order the payment of compensation in place of reinstatement. In this case since there is no violation of Sections 25-G and 25-H of the Act and since no regularization policy has been placed on the file by the petitioner, therefore, the court can not hold that the petitioner shall be eligible for regularization after his reinstatement in accordance with the policies. In view of the aforesaid facts and circumstances, the petitioner is held entitled to receive Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) as compensation as the conduct of the respondents is fair and transparent in this case. It is an admitted fact that petitioner was working with the respondents even at the time when demand was raised by the petitioner for regularization. The respondents has acted in a very unusual manner by terminating the services of the petitioner despite of the fact that petitioner has raised the demand and his services could not have been terminated without seeking permission of the concerned Labour Officer. The respondents tried his best to frustrate the cause of regularization as raised by the petitioner, and therefore, the conduct of the respondent has not been very clear in this case. In these facts and circumstances, the petitioner is held entitled to receive compensation to the tune of Rs.2,50,000/- (Rupees Tow Lakhs Fifty Thousand Only) in lieu of reinstatement and other consequential service benefits.

10. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 146/2017

Date of Institution : 21-06-2017

Date of Decision : 23-01-2023

Shri Yam Chand s/o Shri Shyam Lal, r/o Village Janyuni, P.O. Movi Seri, Tehsil Chachyot,
District Mandi, H.P. . .Petitioner.

Versus

The Executive Engineer, I.&P.H. Division, Sunder Nagar, District Mandi, H.P.
. .Respondent .

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri Rajat Chaudhary, Ld. Adv

For the Respondent : Shri Anil Sharma, Ld. Dy. D.A.

AWARD

The following reference has been received from the appropriate Government for adjudication under section 10 (1) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short):

“Whether termination of services of Shri Yam Chand s/o Shri Shyam Lal, r/o Village Janyuni, P.O. Movi Seri, Tehsil Chachyot, District Mandi, H.P. w.e.f. 12-06-2014 by the Executive Engineer, I.&P.H. Division, Sunder Nagar, District Mandi, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner, in brief, is to the effect that he was initially engaged by the respondent through contractor Shri Manoj Kumar Sharma as water guard in August 2009 and remained as such till August, 2012. He was earlier paid Rs.3600/- per month and w.e.f. August, 2011 he was paid Rs.3900/- per month upto August 2012. In this manner, he worked in the water lift irrigation scheme Dalkeer, Janyani and this scheme was under control and supervision of the respondent. After August, 2012, the contract was given to contractor Shri Satish Thakur and the petitioner worked through contractor Shri Satish Thakur w.e.f. August 2012 to August 2013 and was paid Rs. 4500/- per month. Thereafter the services of the petitioner were engaged by the respondent on daily wages and he worked on muster roll w.e.f. August 2013 to 12 June 2014 without any break and completed 303 days work. Thereafter his services were unlawfully terminated by the respondent and compliance of Section 25-F (a) and (b) was not made despite of the fact that the petitioner has worked for minimum 240 days in a calendar year. The petitioner raised the demand vide demand notice dated 21.9.2015 and supplementary demand dated 16.11.2015. The matter was forwarded to Conciliation Officer-cum-Labour Inspector and he conducted conciliation but the matter could not be resolved amicably though the petitioner was paid Rs.25000/- and Rs.21910/- during conciliation proceedings. The petitioner has further submitted that he has worked for minimum 240 days during 12 calendar months preceding his termination, and therefore, there was violation of Section 25-F of the Act and the respondent be directed to reinstate his services with full back wages, continuity in services, seniority and other financial benefits. Apart from it, his services be regularized by following the policies of the State Government. The petitioner has also prayed for payment of compensation for the injustice meted out to him.

3. The respondent has resisted and contested the petition and denied the relationship of employer and employee between the two. On merits, the case of the respondent is to the effect that the petitioner was never engaged on any muster roll at any point of time to work under Lift Water Supply Scheme Dalikar Janyani. It is submitted that the work was given on tender basis to contractor Shri Manoj Kumar Sharma earlier, and later on, the work was given to Shri Satish Thakur. It is further submitted that it was the duty of the contractor to engage skilled and unskilled labour and there was no direct connection between the labour and the respondent. The respondent has denied that the alleged amount was paid to the petitioner and has asserted that since he was not the employee of the department, therefore, the petition was liable to be dismissed.

4. The petitioner filed rejoinder and reaffirmed the averments so made in the petition and denied those made in the reply.

5. From the pleadings of the parties and language of the reference, following issues were framed for determination on 12.12.2017:—

1. Whether termination of the services of the petitioner by the respondent w.e.f. 12-06-2014 is/was improper and unjustified as alleged? . . .*OPP*.
2. If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
3. Whether the claim petition is not maintainable in the present form, as alleged? . . .*OPR*.
Relief.

6. I have heard learned Counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

7. For the reasons recorded hereinafter, the findings on the above issues are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: No
Relief	: Petition is partly allowed awarding lump sum compensation of Rs. 2,50,000/- per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 and 3

8. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

9. The first and foremost question to be looked into in this reference is whether the petitioner was employee of the respondent or he was employee of the contractor? It is an admitted case of the parties in the pleadings itself that contract was initially given to Shri Manoj Kumar Sharma in order to run this water supply scheme. This contract remained with Shri Manoj Kumar Sharma w.e.f. August 2009 to August 2012. These facts are pleaded by the petitioner himself and

the respondent has also admitted that the petitioner was the workman of this contractor. It is further an admitted fact that thereafter the contract was given to Shri Satish Thakur, who worked w.e.f. August 2012 to August 2013 and he has also engaged the present petitioner for the said work. These facts are pleaded by the petitioner himself and the respondent while leading evidence has also tendered on record the agreement entered with Shri Satish Thakur contractor as Ext.RW1/B. Ext.RW1/C is the letter written to Shri Satish Thakur contractor regarding the tender and Ext.RW1/D is the office order vide which the contract was awarded to him till 13.8.2013. The respondent has not placed on record the documents pertaining to the tender awarded to Shri Manoj Kumar Sharma. Since those tenders are admitted by the petitioner himself, therefore, the documents are not very material. To be brief, it is the petitioner's case himself that he has worked through a contractor till August 2013. The only dispute raised by the petitioner is with regard to his work w.e.f. August 2013 to 12 June 2014. As per the petitioner, he was engaged by the Executive Engineer during this period and he worked on muster roll and in continuity for 303 days and his services were terminated without following the process of law. The respondent, on the other hand, denied the allegations in totality. Infact, the reply filed by the respondent is silent regarding the contractor who was running the aforesaid water supply scheme after August 2013 to June 2014.

10. The petitioner led evidence and his affidavit is Ext.PW1/A. This affidavit is detailed and he has pleaded many facts therein to prove that he was not paid anything for the work done by him after August 2013, and therefore, he had to move an application before Labour Inspector Mandi and during conciliation proceedings an amount of Rs.25000/- was paid at one point of time and, another amount of Rs. 29910/- was paid at the later point of time during the conciliation proceedings itself, and the conciliation proceedings were closed on 16.6.2015. He was subjected to cross-examination wherein he denied that he was not paid any such amount as pleaded by him. There is nothing in his cross-examination which would suggest as to how the work of the said scheme was looked after August 2013 till June 2014. Thus not only the pleadings are silent on this aspect but no cross-examination has been conducted upon the petitioner to suggest that some other person was working and operating this scheme during this period.

11. The respondent examined Shri Praveen Kumar Gupta, the Executive Engineer as RW1 in the witness box and he tendered his affidavit Ext.RW1/A. In his affidavit, he is again silent regarding the fact as to how the work of water supply scheme was managed in between August 2013 to June, 2014. When he was cross-examined he admitted the fact that the work of water supply scheme was not allotted to any contractor in between August 2013 to 12 June 2014. He denied that during this period the petitioner was engaged on muster roll basis. Thus two important facts have emerged out of the statement of this important witness. Firstly, as per the respondent, the scheme was not run on contract during the aforesaid period, and secondly, the petitioner was not engaged on muster roll basis by the respondent during this period. In order to find out the truth, it is necessary to examine the rest of the evidence on the record.

12. The petitioner in his sworn affidavit Ext.PW1/A has made a reference of conciliation proceedings having taken place in an application filed by him to Labour Officer. He was cross-examined but not this aspect of the matter was touched specifically. It was put to him that he has not pleaded about the conciliation proceedings in his claim. When the claim is examined it is clear that petitioner has mentioned in para no.1 of the same that during conciliation proceedings amount of Rs. 25,000/- and Rs. 21910/- respectively paid to him of two different dates. Even these averments has been replied in the reply by denying the same. Thus the petitioner has been consistent right from the very beginning on his stand that he has even filed a complaint before the Labour Department and the conciliation proceedings took place in which some payments were made to him. The petitioner in order to prove this fact has examined Shri Rajinder Gautam, Labour Inspector as PW4. This Labour Inspector produced the original record regarding the conciliation proceedings in the court and tendered a copy of the same as Ext.PW4/A. He has stated that this

complaint was moved by the petitioner on 20.5.2014. He was also cross-examined but there is nothing in the same which would discredit him. The conciliation proceedings are conducted before a responsible public officer and such proceedings can not be taken lightly. Moreover, these proceedings were attended by both the parties. It is clear from the application Ext.PW4/A that the petitioner has specifically pleaded that he was not paid the wages w.e.f. 13.8.2013. He had also said that he was still working with the respondent. This application was moved by him on 22.05.2014. It is clear from the proceedings appended to this application that the Labour Inspector summoned both the parties. The respondents were also represented by Executive Engineer or by Junior Engineer on almost all the dates and such officers have signed the proceedings on every such date. These proceedings were also signed by the petitioner. It is clear from these proceedings that a sum of Rs.25000/- was paid to the petitioner on 28.1.2015. It is shown that this payment was made by some contractor through Shri Mani Ram, the Junior Engineer. It is further clear from the rest of the proceedings that sum of Rs.21910/- was pending and this amount was also paid to the petitioner vide receipt of 16.06.2015 in the presence of the witnesses. Thereafter the proceedings were closed. The receipt of these proceedings has also been tendered on the record by the petitioner therefore Shri Hira Lal (PW3) this witness has tendered the receipt Ext.PW3/A and stated that it was executed in his presence. The respondents during these proceedings have tried to make out a case that the petitioner was working through some contractor and the payment of Rs.25000/- and Rs.21910/- was also being made on behalf of the contractor. Such facts are mentioned in the proceedings itself, copy whereof has been placed on the record Ext.PW4/A. It is very important to notice that neither any contractor was examined before this court nor any other witness said anything about the conciliation proceedings. The conciliation proceedings have taken place before Labour Inspector. It was the duty of the respondents to have explained the fact as to under which circumstances its officers have appeared before the Labour Inspector during the proceedings and who was the contractor by whom some of Rs.25000/- and Rs.21910/- was paid to the petitioner? Nothing has been said by the respondent and silence on this aspect has to be interpreted against the respondent. Even Shri Parveen Kumar Gupta, the Executive Engineer has said nothing about conciliation proceedings. So much so, he had even refused to identify lineman Shri Hira Pal, who is a witness to the receipt. He has admitted that Shri Mani Ram was Junior Engineer at that time. Shri Mani Ram, the then Junior Engineer was the best witness who could have been produced before the court to disclose—the facts as to why he was appearing before the Labour Inspector in those conciliation proceedings? He could have explained as to by whom payments were made to the petitioner and why? Since no evidence has been led by the respondents on these aspects, it is therefore, clear that the respondent is concealing the darker side of its case so that the truth may not come before the court. It was admitted on behalf of the respondent in the conciliation proceedings that the petitioner has worked in this scheme during the period when the work of the scheme was not allotted to any contractor by the department. It is also proved that the petitioner has made complaint to the Labour Inspector and the respondents department participated in these proceedings and got payment made to the petitioner through some contractor. Neither the contractor was examined before the court nor any fact was disclosed regarding him. In fact, the respondent could not have been examined any contractor before the court as the pleaded case of the respondent is to the effect that during the period under dispute the scheme was looked after by the department. In case, the scheme was looked after by the department what was the need to participate in the proceedings before Labour Inspector is not clear. It is again not clear as to why some contractor was compelled to make the payment to the petitioner. All these facts prove that the petitioner has worked in this scheme w.e.f. 13.8.2013 to 12.6.2014 in continuity and since the payments were not made to him, therefore, he had to approach the Labour Inspector and payment was made before Labour Inspector. This evidence proves that petitioner was engaged w.e.f. 13.8.2013 to 12.6.2014 in his individual capacity and he made the scheme functional and operational during this period. The respondent although has come up with the plea that during this period the scheme was run by the department itself as is clear from the information supplied under RTI (Ext P-3), yet no person has been examined in the witness box to depose about this fact. Any

of the lineman of the respondent could have been examined on the record to prove that during the aforesaid period, this scheme was operated by him. Had any such person been deputed by the respondent to run this scheme, his attendance would have been marked on the registers. Such registers could have been produced before this court. Any officer order showing his duty in the aforesaid scheme could have been placed on the record by the respondent to falsify the case of the petitioner, but nothing has been done. Above all, there is no explanation on the record as to why officers from the respondents department attended the conciliation proceedings and why a contractor was asked to make the payment to the petitioner? In case the petitioner has not worked at all there was no need to ask some contractor to make the payment of Rs.25000/- and Rs.21910/- accordingly. Thus the conduct of the respondent corroborates the case of the petitioner to the effect that he was engaged in his personal capacity w.e.f. 14.8.2013 to 12.6.2014 and he has worked in continuity during this period. Since the petitioner has worked for about 10 months therefore, it is held that he has worked for minimum 240 working days with the respondent before his services were terminated without following the procedure of law. Thus the violation of the provisions contained in Section 25-F of the Act is duly established in this case.

13. Since it is not the case of the petitioner that any fresh hands was engaged or any junior was retained at the time of termination of his services, therefore, there is no violation of Sections 25-G and 25-H of the Act. It is settled law by now that in case, the violation of section 25-F alone is established, the rule is payment of compensation rather than ordering the reinstatement of the workman as the employer after reinstatement of such a workman can comply with the provisions contained in section 25-F of the Act and again retrench such a petitioner on payment of the compensation. In the case in hand, since the violation of section 25-F alone is established, the petitioner is held entitled to receive compensation. Taking into account the facts and circumstances of the case, the duration for which the petitioner has worked with the respondents, ends of justice shall be met, in case compensation of Rs. 2,50,000/- (Two Lakh Fifty Thousand only) is awarded in favour of the petitioner. Petition is held maintainable hence all the issues are decided accordingly.

RELIEF

14. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F alone of the Act, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹2,50,000/- (Rupees Two lakh & Fifty Thousands only), which would be paid within four months by the respondents and from the date of receipt of Award failing which the respondents shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

15. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 23rd day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI HANS RAJ, PRESIDING JUDGE, LABOUR COURT-CUM-
INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref. No. : 348/2015
Date of Institution : 05-8-2015
Date of Decision : 24-01-2023

Shri Lok Pal s/o Shri Hari Pal, r/o Village Brokhari, P.O. Jhungi, Sunder Nagar, District Mandi, H.P. . *Petitioner.*

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P. . *Respondent .*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Vipul Bhardwaj, Ld. Adv.
For the Respondent(s) : Sh. Anil Sharma, Ld. Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Lok Pal s/o Shri Hari Pal, r/o Village Brokhari, P.O. Jhungi, Sunder Nagar, District Mandi, H.P. during January, 2010 to April, 2011 and finally during May, 2011 by the Divisional Forest Officer, Suket Forest Division, Sunder Nagar, District Mandi, H.P., without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner in brief is to the effect that he was engaged as a daily wage beldar by the Forest Division Suket at Sunder Nagar in January, 2010 and he worked till April, 2011. Several other persons were also engaged at that time. The respondent used to give time to time fictional breaks to the petitioner despite of the fact that work and funds were available. Seniority list was also prepared and workmen junior to the petitioner were shown in the same. The petitioner worked in the department with dedication and devotion and despite of this his services were verbally terminated without serving notice or paying any compensation to him. The workmen junior to him were retained and fresh hands were also engaged. The respondent also violated Section 9A and 10 of the Act by changing the terms and conditions of his services by converting him from muster rolls to bill basis unilaterally. The matter was brought to the notice of labour department and in this manner the present reference has been made by the Appropriate Government for adjudication by this court. The petitioner has prayed that his services be ordered to be reinstated with back wages, seniority and time to time breaks be also counted towards continuity in service by condoning them. The petitioner has also prayed for grant of compensation apart from the aforesaid relief.

3. The respondent has resisted and contested the claim on the plea of maintainability and submitted that petitioner was never engaged on muster roll basis by the department as alleged and

he had worked on bill basis in the year 2010 for 101 days and in 2011 for 45 days mainly for fire protection and performing other seasonal works. As per the respondent, no seniority list was maintained and it was not required in respect to bill basis workers. On merits, it is denied that any junior was engaged or retained as alleged by the petitioner. The petitioner is said to have left the work after May, 2011 at his sweet will and convenience and did not report to the work. The services of the petitioner, as per the respondent, were never terminated as he was never engaged on muster rolls and therefore, there was neither violation of Section 25-F nor of other provisions of the law. There is a notification dated 28.4.2009 of the State Government which prohibits engagement of workers on bill basis and there was no question of engaging him on muster roll basis. It is submitted that on these facts and circumstances, the petitioner is not entitled for any relief.

4. The petitioner has filed rejoinder and reaffirmed the averments made in the petition and denied those made in the reply. He referred to the regularization list circulated in the year 2015 whereby Shri Yashwant Singh who was engaged on 1.1.2006 was regularized despite of the fact that he has not completed 240 working days. Similarly one Shri Baldev s/o Shri Panna Lal engaged on 1.1.2007 was shown at serial No.109 of the list of the year 2013 but he was regularized and his date of joining report was wrongly shown as on 1.1.2005 hence, the records of the department are false. It is submitted that rest of the averments are reasserted and those of the reply denied.

5. From the pleadings of the parties following issues were framed for determination on 20.12.2017:—

1. Whether time to time termination of services of the petitioner by the respondent during January, 2010 to April, 2011 is/was illegal and unjustified as alleged? . . .*OPP*.
2. Whether final termination of services of the petitioner during May, 2011 is/was improper and unjustified? . . .*OPP*.
3. If issue no.1 or issue no.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? . . .*OPP*.
4. Whether the claim petition is not maintainable in the present form as alleged? . . .*OPR*.
5. Whether the petitioner has no locus standi to file the present claim as alleged? . . .*OPR*.

Relief

6. The parties led evidence. The petitioner appeared as PW1 and tendered his affidavit Ext.PW1/A. He tendered on record copy of some judgment dated 5.11.2014 as Ext.P1, copy of letter dated 21.2.2005 as Ext. P2 and copy of letter dated 1.5.2017 Ext. P3. The respondent on the other hand, examined Shri Suneet Bhardwaj, Divisional Forest Officer, Suket Division, Sunder Nagar as RW1 who tendered his affidavit Ext.RW1/A. He also tendered on record mandays chart of the petitioner as Ext.RW1/B.

7. The file has heard and claim was dismissed. The reference was answered in negative vide Award dated 2.8.2019. It was held in para no.22 of the Award that the reference shows that the termination of the petitioner has taken place in May, 2011 whereas, the petitioner has pleaded in the petition that he worked with the respondents till April, 2011. It was further observed that the mandays chart Ext.RW1/B showed that petitioner had worked for 30 days in May 2011. Referring to Section 10(4) of the Act it was held that there was variation in the pleadings, evidence and the reference, hence petitioner has failed to prove his case and he was not entitled to any relief.

8. The petitioner felt aggrieved and dissatisfied with the Award and filed Writ Petition before the Hon'ble High Court of Himachal Pradesh to assail this award. It was registered as CWP No.3930 of 2020. The Writ Petition was decided by the Hon'ble Court on 9.4.2021 and it was held in paragraph no.22 of the Award that the Tribunal had when making an incisive application of mind to the terms of the afore reference, as, made by the appropriate Government, rather made an erroneous decision that the petitioner in deviation therefrom both pleadings, and, adducing evidence, that his services stood finally terminated by the respondent in the month of May, 2011, whereas, both afore are in tandem with the terms of reference (supra). After making these observations, the Hon'ble Court directed this court to dispose of the reference within eight weeks and the parties were directed to appear before this court on 5.5.2021.

9. Neither the parties appeared before the court on 5.5.2021 nor the copy of the judgment of Hon'ble High Court was received. The copy of the judgment of Hon'ble Court was received in this court on 16.1.2023 and only thereafter the file was called from the record room. The petitioner was immediately summoned and after hearing the arguments the matter is being disposed of within eight days.

10. I have heard learned counsel for the petitioner as well as learned Deputy District Attorney for the respondent at length and considered the material on record.

11. For the reasons recorded hereinafter, the findings on the above issues are as under:—

Issue No.1	:	Decided accordingly
Issue No.2	:	Decided accordingly
Issue No.3	:	Decided accordingly
Issue No.4	:	No
Issue No.5	:	No
Relief	:	Petition is partly allowed awarding Lump sum compensation of ₹3,00,000/-per operative portion of the Award.

REASONS FOR FINDINGS

ISSUES No.1 to 5

12. All these issues taken up together for the sake of convenience and to avoid the repetition of evidence.

13. The learned counsel for the petitioner has argued that the respondent is proved to have intentionally terminated the services of the petitioner time to time so as to prevent him from availing the rights guaranteed by Industrial Disputes Act, hence, such fictional breaks are liable to be condoned and final termination be also set aside as the respondent has not complied with the provisions of the Act while services of the petitioner were finally terminated. On the other hand, the learned Deputy District Attorney has argued that neither the petitioner was engaged on muster roll basis nor he is entitled for any relief as he has worked on bill basis with the respondent. He has prayed for dismissal of the claim.

14. The respondent has although taken the plea that petitioner has worked on bill basis with the respondent and his services were never engaged on daily wage basis, yet the respondent

has failed to establish it. Rather self contradictory material has been placed on the record. The mandays chart tendered on the record by the respondent as Ext.RW1/B is a material document and it speaks volumes of the malafide on the part of the respondent. The respondent although claims that the petitioner has worked on bill basis yet no bill evidencing making the payment to the petitioner has been placed on the file. Rather mandays chart has been placed on the file as Ext.RW1/B showing that the petitioner has worked for 25 days in January 2010, 15, 31, 30 days in April to June 2010 and 15 & 30 days in April and May 2011. In case, the petitioner had worked on bill basis then how this mandays chart came into existence? Mandays chart is prepared in respect of those workmen who work on muster roll basis. The bill basis work is infact a type of individual contract where a specific work is assigned to a particular worker. Such a workmen can complete the assigned work within a day or within number of days. Such worker can complete the work either during the day or during the night or through his family members or through other workers. Once the work is accomplished, the same is days assessed by the respondent as per the approved rates and consolidated amount is paid to such worker on bill. The working days are irrelevant in bill basis work. Similarly it is also immaterial whether the work was accomplished by the worker himself or through his family members or friends. Only relevant consideration is the completion of the work and payment as per the approved rates. The bills prepared with respect to the work is a material evidence and those bills are to be proved on the record. The payment has to be made on the bills. The question of mandays chart does not arise in case of bill basis work. In the case in hand, as aforesaid not even a single bill has been proved on the record. Rather mandays chart has been prepared and tendered on the record which shows that the work done by the petitioner was calculated in terms of days. Proof of such a mandays chart bring the petitioner within the definition of a daily wage beldar and it can not be said that he has worked on bill basis. It is not clear as to from where the respondent has raised plea that petitioner was given work on bill basis and he was never engaged on daily wage basis. In para no.2 of the reply, the respondent has mentioned the number of days for which petitioner has worked. It is said that he has worked for fire protection duty and another seasonal work in the pleadings but no evidence to this effect has been led. Again no such bill prepared in respect to the petitioner has been tendered on the record to show that work was got done from him on bill basis. The mandays chart proved on the record itself falsifies the case of the respondent and it is established that petitioner was engaged as daily waged beldar in the year 2010. The case of the respondent to the effect that the petitioner was engaged as a fire watcher on bill basis is falsified from the mandays chart Ext.RW1/B in which he has been shown to have worked for 25 days in January 2010. There is no work of fire watching in the winter as work of fire watcher are required in hot summer, when there is apprehension of damage by fire in the jungle. No office order has also been filed and proved the record that the services of the fire watchers were being hired for specific work which would come to an end on completion of the work. Had any noting of the office been proved on the record that the petitioner was made well aware of the fact that he was supposed to perform the seasonal work which would come to an end at the end of the season without creating any right in his favour, the position would have been different. When there is no documentation to support the plea of the respondent to the effect that the services of the petitioner were engaged on bill basis, the plea of the respondent is not proved when the respondent has placed on the record the mandays chart of the petitioner.

15. The petitioner has submitted that he was given fictional breaks after his initial engagement and these breaks were given with a view to ensure that he is not able to take advantage of Industrial Disputes Act. The respondent, on the other hand, as aforesaid has come up with the plea that petitioner was given bill basis work. As aforesaid, this plea has miserably failed and therefore, the only presumption that can be drawn is that petitioner was given intentional breaks so that he could not work for a whole year and claim benefit of Section 25-F of the Act. Such breaks are result of unfair labour practices and such breaks are liable to be condoned as the employer can not exploit the workman by such methodologies. The respondent has tendered on record a notification pertaining to the year 2009 Ext.P-R-I whereby there were directions by the State

Government to the forest department to not to engage labour on daily paid basis and introduce bill/tender system. Despite of the specific directions of the Government of Himachal Pradesh, the respondent department engaged the petitioner on muster roll and prepared the mandays chart. The mandays chart was not the requirement in case the petitioner was made to work on bill basis. Only the bills should have been prepared showing the number of working days. Such bills could have been placed on the record. The respondent department flouted the directions of the Government by engaging the petitioner by preparing his mandays chart. It may be stated here that the mandays chart can be prepared from the muster rolls. The respondent has not even explained as to from where the mandays chart was prepared when the petitioner was not working on muster rolls basis. The Industrial Disputes Act is beneficial piece of legislation and it leans in favour of the workman. The respondent is supposed to lead best evidence to deny the case of the petitioner and the respondent being the custodian of the record should have placed on record those bills which were prepared during the period when the petitioner has worked. Those bills were never produced probably for the reason that no such bills were prepared and the petitioner had worked on muster rolls basis. The muster rolls were also withheld and respondent took the plea of bill basis in vacuum. Thus the respondent department has not come to the court with clean hands and best material has been withheld. The benefit goes to the petitioner who is the labourer and he has worked with the respondent and mandays chart was prepared showing his mandays.

16. The respondent has pleaded in para no.6 of the reply that the petitioner worked in the year 2010 and 2011 on bill basis and thereafter never turned up for the work. The respondent had tried to make out a case for abandonment of work by the petitioner but no evidence has been led on this aspect. Neither any notice was issued to him nor he was asked to join the work. The plea of abandonment is not established. Otherwise also, in case the respondent was to offer the work to the workman on bill basis, same document must have been prepared in which the requisitioned of workers on bill basis was made. Such a document should have been placed on record. How the petitioner came to know that the work on bill basis was available with the respondent? No document has been placed by the respondent on the record to suggest that some advertisement was published or the villagers were apprised either through Panchayat regarding work available on bill basis or through other modes. No document of the department has been placed on record showing that the villagers have approached for the work at their own and they were made to work on bill basis. It is therefore, clear that the plea of bill has been taken by the respondent for rejection alone and it has no legs to stand. Since it is not established that petitioner has willfully absented from the work, therefore, the presumption goes that he was given intentional breaks time to time termination by the respondent so that he could not complete 240 working days in any of the calendar year. On the basis of this presumption, it is held that petitioner was given time to time breaks as a course of unfair labour practices. It is therefore, held that such fictional breaks/time to time termination is liable to be condoned and it is held that petitioner was ready to work throughout the year in 2010 and 2011 but he was not given work so that he could not avail the benefit of Section 25-F of the Act. Since the time to time termination has been condoned therefore, it is held that the period for which the petitioner has not worked shall be counted towards the continuity of his services for the purposes of Section 25-B of the Act as petitioner was always ready and willing to work and the work was also available. It is therefore, held that the petitioner would have worked in the year 2011 for more than 240 days, in case he was not subjected to unfair labour practices. In view of the aforesaid discussion, it is held that the time to time termination of the petitioner by the respondent in the year 2010 and 2011 was illegal act of the respondent and such time to time breaks are condoned and the period of absence is counted towards the continuity of his services for the purpose of section 25-B of the Act. Since the service of the petitioner were terminated in May 2011 without complying the provisions of section 25-F of the Act, therefore violation of Section 25-F is established.

17. So far as the respondent witness Shri Suneet Bhardwaj, Divisional Forest Officer is concerned, he has sworn his affidavit Ext.RW1/A in accordance with the reply and when he was

subjected to cross-examination he admitted that there was no bill number on the mandays chart. He further admitted that there was no work order on the record and this witness could not justify the stand as taken by the respondent. His statement is therefore, not very material.

18. The petitioner has further alleged that violation of Section 25-G has held taken place at the time when his services were terminated as juniors were retained. He has also come up with the plea that fresh hands were also engaged after his termination. When the pleadings are examined, it is clear that the pleadings are vague and general in nature. No person who was either junior or was a fresh hand has been named in the same. The petitioner has although named two persons in the rejoinder, but they are senior to the petitioner as per the contents of the rejoinder itself. The petitioner while leading evidence has also not named any person who was engaged after him and was retained at the time of his termination. He also did not name any fresh hand who was engaged after his termination. Since the petitioner has raised this plea therefore, it was for him to at-least led prima-facie evidence on the record by naming any such person. Had he discharged this much onus, the onus would have shifted upon the respondent. Since the petitioner has not named any person in the evidence or the pleadings therefore, onus is not shifted upon the respondent and has failed to prove violation of Sections 25-G and 25-H of the Act.

19. It is pointed out by the learned Deputy District Attorney that the pleadings are not in accordance with the reference as the reference speaks that petitioner's services were terminated in May 2011, whereas, the petitioner claims that his services were terminated in April 2011. He has submitted that since the pleadings are against the reference, therefore the claim is liable to be dismissed. The plea as raised learned Deputy District Attorney is liable to be rejected for the simple reason that the proceedings under Industrial Disputes Act are summary in nature and the purposes of the Act is beneficial. Therefore such technical pleas are not available. What is material at this stage is the fact that the petitioner has been thrown out of the job by the respondent. It is not material whether he was disengaged in April, 2011 or May 2011. When the mandays chart shows that his services have been disengaged in May 2011, and the reference also shows that he was disengaged in May, 2011, therefore the plea of the petitioner even if defective can not be taken to dismiss his claim. Therefore this argument is liable to be rejected.

20. Another question that arises for consideration is as to what relief the petitioner is entitled to in these facts and circumstances. It is by now settled law that when the violation of Section 25-F is proved and violation of Sections 25-G or H is not established, the rule is that of compensation and not reinstatement. The reasons behind this logic is simple. In case a workman is reinstated by the court holding that there was violation of Section 25-F of the Act, the employer is always at liberty to serve the notice under Section 25-F of the Act and terminate the services of such workman after paying him compensation as per law. In such situation, the order of the court stands frustrated. Therefore, when there is no violation of Sections 25-G or 25-H of Act, the rule is that of compensation and not reinstatement. The same rule is applicable to the present case and the petitioner is entitled for compensation for his illegal retrenchment. Taking into account the facts and circumstances of the case, the duration for which the petitioner has worked with the respondents, ends of justice shall be met, in case compensation of Rs. 3,00,000/- (Three Lakh only) is awarded in favour of the petitioner. Petition is held maintainable and petitioner has the locus standi to file the present case, hence all the issues are decided accordingly.

RELIEF

21. In view of my discussion on the above issues, it is held that though there had been violation of Section 25-F alone of the Act, hence reinstatement and other consequential benefits cannot be granted in his favour but he is held entitled for compensation to the tune of ₹3,00,000/- (Rupees Three lakh only), which would be paid within four months by the respondent and from the

date of receipt of Award failing which the respondents shall be liable to pay the interest @ 6% per annum on the said amount from the date of award till the date of its realization. Parties are left to bear their costs.

22. The reference is answered in aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today, this 24th day of January, 2023.

Sd/-
(HANS RAJ),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

FINANCE (PENSION) DEPARTMENT

OFFICE MEMORANDUM

Shimla-171002, the 17th April, 2023

No. Fin (Pen)A(3)-1/2023.—The undersigned is directed to say that in view of the Cabinet Decision for implementation of the Old Pension Scheme under the CCS(Pension) Rules 1972, the State Government has decided that contributions of the State Government employees (*i.e.* employee's and employer's share) covered under National Pension System shall be stopped *w.e.f.* 1st April, 2023.

By order,
PRABODH SAXENA, I.A.S.,
Chief Secretary.

GENERAL ADMINISTRATION DEPARTMENT (Confidential & Cabinet)

NOTIFICATION

Shimla-171 002, the 17th April, 2023

No. GAD-C(A)1-1/2022.—In continuation to this Department Notification of even number dated 13-12-2022, the Governor, Himachal Pradesh is pleased to accord sanction for creation of one post of Principal Advisor (IT & Innovation) to the Chief Minister and to appointment thereto Sh. Gokul Butail s/o Sh. Dinesh Butail, P.O. Bundla Tea Estate, Tehsil Palampur, Himachal Pradesh with effect from 13th December, 2022 in the rank of Cabinet Minister on following terms and conditions:—

1. The Principal Advisor (IT & Innovation) to the Chief Minister will be entitled for ₹2,50,000/- per month as honorarium.
2. He will be entitled to semi-furnished Government Accommodation or he will be entitled for the House Rent @ ₹20,000/- per month in case he is not provided the accommodation by the Government. If he ceases to be the Principal Advisor (IT & Innovation) to the Chief Minister or his services are no longer required by the Government of Himachal Pradesh, he will vacate the accommodation if allotted, within 15 days of such notification. Furniture charges will not be admissible in case he is receiving house rent allowance in lieu of Government Accommodation. The actual expenditure of electricity and water charges of the provided accommodation will be borne by the Government.
3. He shall be entitled for daily allowance @ ₹200/- per day while on tour.
4. He will be provided a car/vehicle by the Government and its expenditure will be borne by the Government or vehicle allowance to the tune of ₹ 2000/- per month will be provided in place of vehicle facility.
5. He will be entitled for road mileage allowance @ ₹8.0 per KM (hilly and plain area) while on tour in his own vehicle.
6. He shall be entitled to avail Medical facilities and grant of reimbursement of medical expenses as admissible under the relevant rules/instructions of the State Government.
7. As per the entitlement he will be eligible to claim his TA/DA bills for his tour programmes.

By order,
PRABODH SAXENA,
Chief Secretary.

GENERAL ADMINISTRATION DEPARTMENT
(Confidential & Cabinet)

ORDER

Shimla-171 002, the 17th April, 2023

No. GAD-C(A)1-1/2023.—In continuation to this Department Notification of even number dated 22-02-2023, the Governor, Himachal Pradesh is pleased to appoint Sh. Anil Kapil s/o Late Sh. Ravinder Nath, H. No. 1, Block C, Verma Apartments, Dyerton Estate, Bypass Road, Shimla-171001 as Advisor (Infrastructure) to the Chief Minister on Co-terminus basis with effect from 22-02-2023 on the following terms and conditions:—

1. The Advisor (Infrastructure) to the Chief Minister will be entitled at a fixed honorarium of ₹1.75 lacs per month.

2. A Vehicle can be provided to him from GAD for logistic support and to that extent, approval for temporary addition to the fleet strength of GAD till the time Sh. Anil Kapil is holding the position.

By order,
PRABODH SAXENA,
Chief Secretary.

GENERAL ADMINISTRATION DEPARTMENT
(Confidential & Cabinet)

NOTIFICATION

Shimla-171 002, the 22nd February, 2023

No. GAD-C(A)1-1/2023.—The Governor, Himachal Pradesh is pleased to engage Sh. Anil Kapil s/o Late Sh. Ravinder Nath, H. No. 1, Block C. Verma Apartments, Dyerton Estate, By pass Road, Shimla-171001 as Advisor (Infrastructure) to Hon'ble Chief Minister on Co-terminus basis with immediate effect in public interest. Further, he will also advise HPIDB on various functions of the Board.

The detailed terms and conditions shall be notified separately.

By order,
PRABODH SAXENA,
Chief Secretary.

ब अदालत श्री बलवंत सिंह राणा, सहायक समाहर्ता द्वितीय श्रेणी (नायब तहसीलदार), कांग्रू,
जिला हमीरपुर (हि0प्र0)

तारीख दायर : 28-02-2022

आगामी तारीख पेशी : 18-04-2023

श्री जसवन्त सिंह पुत्र श्री बंसी लाल, वासी टीका कुठियाना, मौजा नौहंगी, उप-तहसील कांग्रू, जिला हमीरपुर (हि0 प्र0) वादी।

बनाम

आम जनता

प्रतिवादीगण।

सायल श्री जसवन्त सिंह पुत्र श्री बंसी लाल, वासी टीका कुठियाना, मौजा नौहंगी, उप-तहसील कांग्रू, जिला हमीरपुर ने अधोहस्ताक्षरी कार्यालय में प्रार्थना-पत्र दिया है एवं प्रार्थना की है कि उनका नाम श्री जसवंत सिंह पुत्र श्री बंसी लाल है किन्तु राजस्व रिकार्ड टीका कुठियाना, मौजा नौहंगी, उप-तहसील कांग्रू, जिला हमीरपुर में उनका नाम जसवन्त कुमार दर्ज है जोकि गलत है। प्रार्थी अपना नाम दुरुस्त करवाकर जसवन्त कुमार उपनाम जसवन्त सिंह दर्ज करवाना चाहता है। प्रार्थी द्वारा आधार कार्ड, मैट्रिक सर्टिफिकेट शपथ-पत्र व पर्चा जमाबंदी साथ संलग्न की है।

अतः इस इशतहार के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी को उक्त नाम दुरुस्ती को दर्ज करवाने बारे कोई उजर/एतराज हो तो वह दिनांक 18-04-2023 को असालतन या वकालतन अधोहस्ताक्षरी कार्यालय में हाजिर आकर अपना पक्ष रख सकता हं। हाजिर न आने की सूरत में आम जनता के विरुद्ध एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही अमल में लाई जावेगी।

यह इशतहार आज दिनांक 16-03-2023 को मेरे मोहर व हस्ताक्षर सहित जारी किया गया।

मोहर।

हस्ताक्षरित/—
(बलवंत सिंह राणा),
सहायक समाहर्ता द्वितीय श्रेणी (नायब तहसीलदार),
कांगू जिला हमीरपुर (हि0 प्र0)।

ब अदालत श्री बलवंत सिंह राणा, सहायक समाहर्ता द्वितीय श्रेणी (नायब तहसीलदार), कांगू जिला हमीरपुर (हि0प्र0)

तारीख दायर : 27-06-2022

आगामी तारीख पेशी : 18-04-2023

श्री अक्षय शर्मा पुत्र श्री राज कुमार, वासी टीका तरकेडी, मौजा भुम्पल, उप-तहसील कांगू जिला हमीरपुर (हि0 प्र0) वादी।

बनाम

आम जनता

प्रतिवादीगण।

सायल श्री अक्षय शर्मा पुत्र श्री राज कुमार वासी टीका तरकेडी, मौजा भुम्पल, उप-तहसील कांगू जिला हमीरपुर ने अधोहस्ताक्षरी कार्यालय में प्रार्थना-पत्र दिया है एवं प्रार्थना की है कि उनका नाम श्री अक्षय शर्मा पुत्र श्री राज कुमार है किन्तु राजस्व रिकार्ड टीका तरकेडी, मौजा नौहंगी, उप-तहसील कांगू जिला हमीरपुर में उनका नाम अक्षय कुमार पुत्र श्री राज कुमार दर्ज है जोकि गलत है। प्रार्थी अपना नाम दुरुस्त करवाकर अक्षय कुमार उपनाम अक्षय शर्मा दर्ज करवाना चाहता है। प्रार्थी द्वारा आधार कार्ड, राशन कार्ड, शपथ-पत्र व पर्चा जमाबंदी साथ संलग्न की है।

अतः इस इशतहार के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी को उक्त नाम दुरुस्ती को दर्ज करवाने बारे कोई उजर/एतराज हो तो वह दिनांक 18-04-2023 को असालतन या वकालतन अधोहस्ताक्षरी कार्यालय में हाजिर आकर अपना पक्ष रख सकता है। हाजिर न आने की सूरत में आम जनता के विरुद्ध एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही अमल में लाई जावेगी।

यह इशतहार आज दिनांक 16-03-2023 को मेरे मोहर व हस्ताक्षर सहित जारी किया गया।

मोहर।

हस्ताक्षरित/—
(बलवंत सिंह राणा),
सहायक समाहर्ता, द्वितीय श्रेणी (नायब तहसीलदार),
कांगू जिला हमीरपुर (हि0 प्र0)।

**ब अदालत श्री बलवंत सिंह राणा, सहायक समाहर्ता द्वितीय श्रेणी (नायब तहसीलदार), कांगू,
जिला हमीरपुर (हि0प्र0)**

तारीख दायर : 27-02-2023

आगामी तारीख पेशी : 18-04-2023

श्रीमती राधा देवी पुत्री श्री चंदू राम, वासी मुहाल झरेडी, मौजा बड़ोहग, उप-तहसील कांगू, जिला हमीरपुर (हि0 प्र0) वादियां।

बनाम

आम जनता

प्रतिवादीगण।

सायल श्रीमती राधा देवी पुत्री श्री चंदू राम, वासी मुहाल झरेडी, मौजा बड़ोहग, उप-तहसील कांगू, जिला हमीरपुर हिमाचल प्रदेश ने अधोहस्ताक्षरी कार्यालय में प्रार्थना-पत्र दिया है एवं प्रार्थना की है कि उनका जन्म ग्राम पंचायत बढेडा, उप-तहसील कांगू, जिला हमीरपुर में दिनांक 21-04-1964 को हुआ था किन्तु किन्हीं कारणों से उनकी जन्म तिथि ग्राम पंचायत के रजिस्टर में दर्ज न करवा सके थे इसलिए वह उक्त जन्म तिथि को अब दर्ज करवाना चाहती हैं। इसके लिए उन्होंने Affidavit, नॉन अविलबिलिटी फॉर्म नंबर 10, बर्थ रिपोर्ट परफॉर्मा फॉर्म नंबर-1, छायाप्रति स्कूल लीविंग सर्टिफिकेट साथ संलग्न किया है।

अतः इस इश्तहार के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी को उक्त जन्म तिथि को ग्राम पंचायत बढेडा, उप-तहसील कांगू के बर्थ रजिस्टर में दर्ज करवाने बारे कोई उजर/एतराज हो तो वह दिनांक 18-4-2023 को असालतन या वकालतन अधोहस्ताक्षरी कार्यालय में हाजिर आकर अपना पक्ष रख सकता है। हाजिर न आने की सूरत में आम जनता के विरुद्ध एकतरफा कार्यवाही अमल में लाई जाकर आगामी कार्यवाही अमल में लाई जावेगी।

यह इश्तहार आज दिनांक 16-03-2023 को मेरे मोहर व हस्ताक्षर सहित जारी किया गया।

मोहर।

हस्ताक्षरित / -
(बलवंत सिंह राणा),
सहायक समाहर्ता द्वितीय श्रेणी (नायब तहसीलदार),
कांगू, जिला हमीरपुर (हि0 प्र0)।

**ब अदालत नायब तहसीलदार एवं सहायक समाहर्ता द्वितीय श्रेणी, तहसील सुलह,
जिला कांगड़ा (हि0प्र0)**

किस्म मुकद्दमा : निशानदेही

तारीख पेशी : 19-04-2023

शिवानी

बनाम

सरला कुमारी आदि

नोटिस बनाम :

1. सरला कुमारी पत्नी सुरेन्द्र कुमार पुत्र चमन लाल, निवासी राम नगर टिकर, उप-तहसील पंचरुखी, जिला कांगड़ा, 2. ओंकार चन्द पुत्र भीम सैन पुत्र रंगीला राम, निवासी आईमा, तहसील पालमपुर, जिला कांगड़ा (हि0प्र0)

खाता नं0 8 मिन, खतौनी नं0 10 मिन, खसरा नं0 853/46/1, रकबा तादादी 0-01-15 हैक्ट0 व खाता नं0 10 मिन, खतौनी नं0 11 मिन, खसरा नं0 893/47 रकबा तादादी 00-00-50 हैक्ट0 वाक्या महाल रायपुर टी एस्टेट, उप-तहसील सुलह, जिला कांगड़ा (हि0प्र0)

उपरोक्त मुकद्दमा इस न्यायालय में विचाराधीन है। इसमें प्रतिवादीगण को समन जारी कर तलब किया गया। परन्तु प्रतिवादीगण को तामील नियमानुसार नहीं हो पा रही है। प्रार्थी ने राजपत्र इश्तहार जारी करने का अनुरोध किया। अतः अब प्रतिवादीगण को राजपत्र इश्तहार द्वारा को सूचित किया जाता है कि इस केस बारे किसी को कोई एतराज हो तो वह दिनांक 19-04-2023 को अधोहस्ताक्षरी की अदालत में असालतन या वकालतन हाजिर होकर पेश कर सकता है। गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाएगी।

आज दिनांक 24-03-2023 को हमारे हस्ताक्षर व मोहर सहित जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता द्वितीय श्रेणी,
सुलह, जिला कांगड़ा (हि0प्र0)।

ब अदालत श्री जगदीश चन्द सहायक समाहर्ता प्रथम श्रेणी, थुरल, जिला कांगड़ा (हि0प्र0)

मुकद्दमा तकसीम नं0 : 03/2023/टी0टी0पी0

तारीख पेशी : 21-04-2023

श्री संजीव कुमार पुत्र व श्रीमती सुमती देवी पत्नी स्व0 चौकश राम, वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रार्थीगण।

बनाम

श्री राज कुमार श्री जोध सिंह, वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रतिवादीगण।

नोटिस बनाम : 1. श्रीमती निर्मला देवी पुत्री श्री जमीत सिंह, 2. श्रीमती रमा कुमारी पुत्री कर्म सिंह, 3. श्रीमती कौशलया देवी, श्रीमती जशोदा देवी व श्रीमती विन्दो देवी पुत्रियां श्री रामा, 4. श्री अजय कुमार पुत्र श्रीमती सुजाता कुमारी, संगीता कुमारी, वंदना कुमारी पुत्रियां श्रीमती दर्शना पत्नी स्व0 मस्त राम, 5. श्री सुभाष चन्द पुत्र सुभकर्ण, 6. श्रीमती सपना देवी पुत्री सन्तोष सिंह, महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा, हि0प्र0 प्रतिवादीगण।

विषय.—हि0प्र0 भू0, राजस्व अधिनियम, 1954 की धारा 123 के अन्तर्गत भूमि खेवट नं0 136, खतौनी नं0 174, ता0 177, खसरा कित्ता 7, रकबा तादादी 00-17-14 है0, वाक्या महाल टिकरी, मौजा व तहसील थुरल, जिला कांगड़ा, हि0 प्र0 के भूमि विभाजन हेतु प्रार्थना-पत्र।

प्रार्थीगण श्री संजीव कुमार पुत्र व श्रीमती सुमती देवी पत्नी स्व0 चौकश राम, वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) ने इस अदालत में खाता नं0 136 का दावा भूमि तकसीम दायर कर रखा है जिसमें उपरोक्त वर्णित प्रतिवादीगण की तामील बार-बार समन जारी करने पर नहीं हो पा

रही है और न ही प्रार्थीगण को इनका सही पता मालूम है। प्रार्थीगण ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय की संतुष्टि व विश्वास हेतु यह सिद्ध हो गया है कि उक्त प्रतिवादीगण की तामील साधारण ढंग से नहीं हो सकती है। अतः उक्त वर्णित प्रतिवादीगण को इस इशतहार अखबारी व मुस्त्री मुनादी चंस्पांगी द्वारा सूचित किया जाता है कि वह उक्त मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 21-04-2023 को हाजिर अदालत होकर पैरवी मुकद्दमा करें अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी किस्म का उजर या एतराज स्वीकार्य न होगा।

यह इशतहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 23-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0प्र0)।

ब अदालत श्री जगदीश चन्द सहायक समाहर्ता प्रथम श्रेणी, थुरल, जिला कांगड़ा (हि0प्र0)

मुकद्दमा तकसीम नं0 : 04/2023

तारीख पेशी : 21-04-2023

श्री संजीव कुमार पुत्र चौकसू राम आदि महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रार्थीगण।

बनाम

श्री सरताज सिंह पुत्र शक्ति चन्द आदि महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रतिवादीगण।

नोटिस बनाम : 1. श्रीमती सुदर्शना देवी पुत्री शक्ति चन्द, 2. सुजाता कुमारी, संगीता कुमारी, वंदना कुमारी पुत्रियां अजय कुमार पुत्र व श्रीमती सुदर्शना देवी पत्नी स्व0 मस्त राम, 4. सुभाष चन्द पुत्र व श्रीमती माया देवी पत्नी स्व0 सुभकर्ण, महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा, हि0प्र0 प्रतिवादीगण।

विषय.—हि0प्र0 भू0, राजस्व अधिनियम, 1954 की धारा 123 के अन्तर्गत भूमि खेवट नं0 133, खतौनी नं0 164, ता0 167, खसरा कित्ता -6, रकबा तादादी 00-44-85 है0, वाक्या महाल टिकरी, मौजा व तहसील थुरल, जिला कांगड़ा, हि0 प्र0 के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्री संजीव कुमार पुत्र चौकसू राम वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) ने इस अदालत में खाता नं0 133 का दावा भूमि तकसीम दायर कर रखा है जिसमें उपरोक्त वर्णित प्रतिवादी की तामील बार-बार समन जारी करने पर नहीं हो पा रही है और न ही प्रार्थीगण को इनका सही पता मालूम है। प्रार्थीगण ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय की संतुष्टि व विश्वास हेतु यह सिद्ध हो गया है कि उक्त प्रतिवादीगण की तामील साधारण ढंग से नहीं हो सकती है। अतः उक्त वर्णित प्रतिवादीगण को इस इशतहार अखबारी व मुस्त्री मुनादी चंस्पांगी द्वारा सूचित किया जाता है कि वह उक्त मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 21-04-2023 को हाजिर अदालत होकर पैरवी मुकद्दमा करें अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी किस्म का उजर या एतराज स्वीकार्य न होगा।

यह इशतहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 22-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0प्र0)।

ब अदालत श्री जगदीश चन्द सहायक समाहर्ता प्रथम श्रेणी, थुरल, जिला कांगड़ा (हि0प्र0)

मुकद्दमा तकसीम नं0 : 01/2023

तारीख पेशी : 21-04-2023

श्री संजीव कुमार पुत्र चौकसू राम महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0)

बनाम

श्री विजय कुमार पुत्र उत्तम चन्द आदि महाल थुरल खास, तहसील थुरल, जिला कांगड़ा (हि0प्र0)
प्रतिवादीगण।

नोटिस बनाम : 1. श्री मस्त राम पुत्र सुभकरण महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा, हि0प्र0, 2. श्री सुभाष चन्द पुत्र सुभकर्ण, महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा, हि0प्र0 प्रतिवादीगण।

विषय.—हि0प्र0 भू0, राजस्व अधिनियम, 1954 की धारा 123 के अन्तर्गत भूमि खेवट नं0 164, खतौनी नं0 231, खसरा कित्ता -6, रकबा तादादी 00-30-04 है0, वाक्या महाल ठाण, मौजा व तहसील थुरल, जिला कांगड़ा, हि0 प्र0 के भूमि विभाजन हेतु प्रार्थना-पत्र।

श्री संजीव कुमार पुत्र चौकसू राम, वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) ने इस अदालत में खाता नं0 164 का दावा भूमि तकसीम दायर कर रखा है जिसमें उपरोक्त वर्णित प्रतिवादी की तामील बार-बार समन जारी करने पर नहीं हो पा रही है और न ही प्रार्थीगण को इनका सही पता मालूम है। प्रार्थीगण ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय की संतुष्टि व विश्वास हेतु यह सिद्ध हो गया है कि उक्त प्रतिवादीगण की तामील साधारण ढंग से नहीं हो सकती है। अतः उक्त वर्णित प्रतिवादी को इस इशतहार अखबारी व मुस्त्री मुनादी चस्पांगी द्वारा सूचित किया जाता है कि वह उक्त मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 21-04-2023 को हाजिर अदालत होकर पैरवी मुकद्दमा करें अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी किस्म का उजर या एतराज स्वीकार्य न होगा।

यह इशतहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 22-03-2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0प्र0)।

ब अदालत श्री जगदीश चन्द सहायक समाहर्ता प्रथम श्रेणी, थुरल, जिला कांगड़ा (हि0प्र0)

मुकद्दमा तकसीम नं0 : 02/2023/टी0टी0पी0

तारीख पेशी : 21-04-2023

श्री संजीव कुमार पुत्र व श्रीमती सुमती देवी पत्नी स्व0 चौकश राम, वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रार्थीगण।

बनाम

श्री अजय कुमार पुत्र श्री मस्त राम, वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रतिवादीगण।

नोटिस बनाम : 1. श्री अजय कुमार पुत्र व श्रीमती सुजाता कुमारी, संगीता कुमारी, वन्दना कुमारी पुत्रियां तथा श्रीमती दर्शना पत्नी स्व0 श्री मस्त राम, 2. श्री सुभाष चन्द पुत्र व श्रीमती माया देवी पत्नी स्व0 सुभकर्ण, 3. श्री प्रेम दास, कंवलजीत सिंह, अमरजीत सिंह पुत्र मस्त राम, 4. श्रीमती सवित्री डोगरा पुत्री रघु राम, 5. श्री सुनील कुमार पुत्र श्रीमती रूची बाला, अलका रानी पुत्रियां व श्रीमती कमलेश कुमारी पत्नी स्व0 महिन्द्र सिंह समस्त निवासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा, हि0प्र0 प्रतिवादीगण।

विषय.—हि0प्र0 भू0, राजस्व अधिनियम, 1954 की धारा 123 के अन्तर्गत भूमि खेवट नं0 134, खतौनी नं0 168, ता0 172, खसरा कित्ता —9, रकबा तादादी 00—13—58 है0, वाक्या महाल टिकरी, मौजा व तहसील थुरल, जिला कांगड़ा, हि0 प्र0 के भूमि विभाजन हेतु प्रार्थना—पत्र।

श्री संजीव कुमार पुत्र व श्रीमती सुमती देवी पत्नी स्व0 चौकश राम, वासी महाल थुरल खास, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) ने इस अदालत में खाता नं0 134 का दावा भूमि तकसीम दायर कर रखा है जिसमें उपरोक्त वर्णित प्रतिवादीगण की तामील बार—बार समन जारी करने पर नहीं हो पा रही है और न ही प्रार्थीगण को इनका सही पता मालूम है। प्रार्थीगण ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय की संतुष्टि व विश्वास हेतु यह सिद्ध हो गया है कि उक्त प्रतिवादीगण की तामील साधारण ढंग से नहीं हो सकती है। अतः उक्त वर्णित प्रतिवादीगण को इस इशतहार अखबारी व मुन्त्री मुनादी चस्पांगी द्वारा सूचित किया जाता है कि वह उक्त मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 21—04—2023 को हाजिर अदालत होकर पैरवी मुकद्दमा करें अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी किस्म का उजर या एतराज स्वीकार्य न होगा।

यह इशतहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 23—03—2023 को जारी हुआ।

मोहर।

हस्ताक्षरित/—
सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0प्र0)।

ब अदालत श्री जगदीश चन्द सहायक समाहर्ता प्रथम श्रेणी, थुरल, जिला कांगड़ा (हि0प्र0)

मुकद्दमा तकसीम नं0 : 26/2022

तारीख पेशी : 21—04—2023

श्री विनोद कुमार पुत्र पंचम सिंह आदि महाल डुहक खुर्द, मौजा आलमपुर, तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रार्थीगण।

बनाम

श्री हरवंश सिंह पुत्र रणधिर सिंह आदि महाल डुहक खुर्द, मौजा आलमपुर, तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रतिवादीगण।

नोटिस बनाम : 1. श्री हरवंश सिंह, प्रितम सिंह, गन्धर्व सिंह, प्रभात सिंह पुत्र कान्ता देवी, लता देवी पुत्रियां व सुसिला देवी पत्नी स्व0 रणधिर सिंह, 2. ओम प्रकाश, हंस राज, अशवनी कुमार, जनम सिंह

पुत्र व चम्पा देवी, सरस्वती देवी, गायत्री देवी, देवयन्ती देवी पुत्रियां रणधिर सिंह, 3. करण सिंह, नरेन्द्र सिंह पुत्र व पुष्पा देवी, रक्षा देवी पुत्रियां राजेन्द्र सिंह, 4. घनश्याम सिंह पुत्र दवेन्द्र सिंह, 5. राकेश कुमार पुत्र श्रीमती रिकू मधु, पुत्रियां द्रुव देव, 6. जगतम्बा देवी, सत्या देवी गुलावो देवी पुत्रियां राम सिंह महाल डुहक खुर्द, मौजा आलमपुर तहसील थुरल, जिला कांगड़ा, हि0प्र0

प्रतिवादीगण।

विषय.—हि0प्र0 भू0, राजस्व अधिनियम, 1954 की धारा 123 के अन्तर्गत भूमि खेवट नं0 54, खतौनी नं0 56, ता0 57, खसरा कित्ता —44, रकबा तादादी 00—70—08 है0, वाक्या महाल डुहक खुर्द, मौजा आलमपुर, तहसील थुरल, जिला कांगड़ा, हि0 प्र0 के भूमि विभाजन हेतु प्रार्थना—पत्र।

श्री विनोद कुमार पुत्र पंचम सिंह महाल डुहक खुर्द, मौजा आलमपुर, तहसील थुरल, जिला कांगड़ा (हि0प्र0) ने इस अदालत में खाता नं0 54 का दावा भूमि तकसीम दायर कर रखा है जिसमें उपरोक्त वर्णित प्रतिवादी की तामील बार-बार समन जारी करने पर नहीं हो पा रही है और न ही प्रार्थीगण को इनका सही पता मालूम है। प्रार्थीगण ने इनका सही पता प्राप्त होने बारे अपनी असमर्थता जताई है। अतः न्यायालय की संतुष्टि व विश्वास हेतु यह सिद्ध हो गया है कि उक्त प्रतिवादीगण की तामील साधारण ढंग से नहीं हो सकती है। अतः उक्त वर्णित प्रतिवादी को इस इशतहार अखबारी व मुस्त्री मुनादी चस्पांगी द्वारा सूचित किया जाता है कि वह उक्त मुकद्दमा की पैरवी हेतु असालतन या वकालतन तारीख पेशी 21—04—2023 को हाजिर अदालत होकर पैरवी मुकद्दमा करें अन्यथा गैरहाजिरी की सूरत में एकतरफा कार्यवाही अमल में लाई जाकर आगामी आदेश पारित कर दिया जाएगा व बाद तारीख पेशी किसी किस्म का उजर या एतराज स्वीकार्य न होगा।

यह इशतहार मेरे हस्ताक्षर व मोहर अदालत से आज दिनांक 22—03—2023 को जारी हुआ।

मोहर।

हस्ताक्षरित /—
सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0प्र0)।

ब अदालत श्री जगदीश चन्द तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0प्र0)

किस्म मुकद्दमा : दुरुस्ती नाम

तारीख पेशी : 28—04—2023

श्री करण सिंह पुत्र किरत चन्द, निवासी महाल चलाह, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) प्रार्थी।

बनाम

आम जनता

प्रतिवादी।

विषय.—प्रार्थना—पत्र दुरुस्ती नाम राजस्व अभिलेख महाल चलाह, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0)।

प्रार्थी श्री करण सिंह पुत्र किरत चन्द, निवासी महाल चलाह, मौजा व तहसील थुरल, जिला कांगड़ा (हि0प्र0) ने एक प्रार्थना—पत्र मय शपथ—पत्र पीठासीन अधिकारी के समक्ष प्रस्तुत करते हुए अनुरोध किया है कि उसका नाम जन्म प्रमाण—पत्र, शिक्षा प्रमाण—पत्र में करण सिंह दर्ज है व उसका विख्यात व सही नाम भी करण सिंह ही है परन्तु राजस्व अभिलेख महाल चलाह, तहसील थुरल में उसका नाम कृष्ण सिंह गलत दर्ज हो गया है। अतः प्रार्थी अब अपने नाम की राजस्व अभिलेख महाल चलाह, तहसील थुरल में दुरुस्ती करवा

करके कृष्ण सिंह के बजाए करण सिंह करवाना चाहता है। अतः प्रार्थी का आवेदन स्वीकार करते हुए इस मुस्त्री मुनादी चस्पांगी इश्तहार अखबारी के माध्यम से आम जनता को सूचित किया जाता है कि यदि किसी व्यक्ति को उक्त प्रार्थी के नाम की राजस्व अभिलेख महाल चलाह, तहसील थुरल में कृष्ण सिंह के बजाए करण सिंह दर्ज करवाने बारे किसी किस्म की आपत्ति या उजर हो तो वह तारीख पेशी 28-04-2023 को असालतन या वकालतन हाजिर अदालत होकर अपना उजर पेश कर सकता है अन्यथा बाद तारीख पेशी किसी किस्म का उजर एवं एतराज नहीं सुना जावेगा व नाम दुरुस्ती का आदेश पारित कर दिया जाएगा।

यह इश्तहार आज दिनांक 28-03-2023 को मोहर अदालत व मेरे हस्ताक्षर से जारी हुआ।

मोहर।

जगदीश चन्द,
तहसीलदार एवं सहायक समाहर्ता प्रथम श्रेणी,
थुरल, जिला कांगड़ा (हि0प्र0)।

In the Court of Executive Magistrate, Anni, District Kullu, H.P.

Kumbh Dass

. . Applicant.

Versus

General Public

. . Respondent.

Subject.—Notice under section 13(3) of Birth & Death Registration Act, 1969.

Sh. Kumbh Dass s/o Sh. Bansi Lal, r/o Village Deem, P.O. Jaon, Tehsil Anni, District Kullu, H.P. has moved an application in the office of the undersigned accompanying with an affidavit stating that the death registration event of her mother Smt. Murtu Devi w/o Sh. Bansi Lal died on 09-05-2021 has not been entered in the record of Gram Panchayat Lajehri.

Hence, the general public is hereby made aware through this notice that if any person or relative have any objection regarding entering death event of the mother of the applicant died on 09-05-2021 in the Panchayat record of Gram Panchayat Lajehri, he/she/they may file his/ her/their objections on or before 10-04-2023 before this court. In case of non-filing of any objection, the *ex-parte* order will be passed.

Given under my seal and signature on this 18th day of March, 2023.

Seal.

Sd/-
Executive Magistrate,
Anni, District Kullu, H.P.

ब अदालत उप-मण्डल दण्डाधिकारी एवं विवाह पंजीकरण अधिकारी बन्जार,
जिला कुल्लू, हिमाचल प्रदेश

मुकद्दमा नं० : 10 / 2023 576-81

दिनांक : 28-03-2023

1. श्री दुनी चन्द पुत्र श्री रोशन लाल, गांव व डाकघर पनिहार, तहसील बन्जार, जिला कुल्लू, (हि0प्र0)।

2. श्रीमती मूरतू देवी पुत्री श्री कूर्म दत्त, गांव तड़ियार, डाकघर चैहनी, तहसील बन्जार, जिला कुल्लू, (हि0प्र0) प्रार्थीगण।

बनाम

आम जनता

प्रार्थीगण ने अधोहस्ताक्षरी की अदालत में प्रार्थना-पत्र मय ब्यान हल्फिया इस आशय से गुजारा है कि प्रार्थीगण ने दिनांक 01-01-2019 को अपनी शादी हसब रिवाज मुल्क व कौम से कर ली है। वे इस शादी का इन्द्राज गलती से कहीं दर्ज नहीं करवा सके हैं और अब वे अपनी शादी का इन्द्राज ग्राम पंचायत गोपालपुर, विकास खण्ड बंजार जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करवाना चाहते हैं।

इस सम्बन्ध में सर्वसाधारण को सूचित किया जाता है कि प्रार्थीगण श्री दुनी चन्द व श्रीमती मूरतू देवी की शादी का इन्द्राज ग्राम पंचायत गोपालपुर, विकास खण्ड बंजार जिला कुल्लू (हि0प्र0) के अभिलेख में दर्ज करने में यदि किसी को कोई आपत्ति हो तो वह दिनांक 28-04-2023 तक असालतन या वकालतन अदालत हजा में आकर अपनी आपत्ति दर्ज करें। बाद गुजरने तारीख किसी भी प्रकार का एतराज मान्य न होगा तथा एकतरफा कार्यवाही अमल में लाई जाकर हिमाचल प्रदेश विवाह रजिस्ट्रीकरण अधिनियम, 2004 धारा 4(2) के तहत शादी की तिथि 01-01-2019 का इन्द्राज करने के आदेश पारित कर दिए जाएंगे।

आज दिनांक 28-03-2023 को मेरे हस्ताक्षर व मोहर अदालत से जारी हुआ।

मोहर।

हस्ताक्षरित /—
उप-मण्डल दण्डाधिकारी एवं विवाह पंजीकरण अधिकारी,
बन्जार, जिला कुल्लू (हि0प्र0)।

In the Court of Sub-Divisional Magistrate, Rampur Bushahr, District Shimla (H. P.)

In the matter of :

1. Sh. Karan s/o Sh. Hira Singh r/o Village Chadi, P.O. and Tehsil Nankhari, District Shimla (H. P.). Applicant.

Versus

General Public

Respondent.

Proclamation regarding Correction of name.

Whereas, the above named applicant have made an application before me regarding correction of his name as Karan in place of Karan Mehta in the records of Gram Panchayat Karangla, Tehsil Nankhari, District Shimla (H. P.).

Now, Therefore, objection are invited from the general public that if anyone has any objection regarding to change his name as Karan in place of Karan Mehta, they should appear

before the undersigned on or before 19-04-2023 either personally or through their authorized agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* without affording any further opportunity of being heard.

Issued today on 20th day of the March, 2023 under my hand and seal of the court.

Seal.

Sd/-
(NISHANT TOMAR H.A.S.),
Sub-Divisional Magistrate,
Rampur Bushahr, District Shimla (H. P.).

In the Court of Sub-Divisional Magistrate, Rampur Bushahr, District Shimla (H. P.)

In the matter of :

1. Yusuf s/o Sh. Noor Husain, r/o Village Kanu 15/20, P.O. Labana-Sadana, Tehsil Rampur, District Shimla (H. P.).
2. Ilma Bibi d/o Baggu, r/o Village Khabda, Tehsil Nalagarh, District Solan (H. P.)
Applicants.

Versus

General Public

Respondent.

Registration of Marriage under section 8(4) of the H. P. Registration of Marriages Act, 1996 (Act No. 21 of 1997).

Whereas, the above named applicants have made an application before me under section 8(4) of the H. P. Registration of Marriages Act, 1996 alongwith relevant record and affidavits stating therein that they have solemnized their marriage on 04-05-2012 at Nalagarh, Tehsil Nalagarh, District Solan with prevailing rites and customs but due to some un-avoidable circumstances it could not be entered in the records of Gram Panchayat Labana-Sadana, Tehsil Rampur, District Shimla (H. P.).

And whereas, they have also stated that they were not aware of the laws for the registration of marriage with the registrar of marriages and now, therefore, necessary orders of the registration of their marriage be passed, so that their marriage could be registered by the concerned authority.

Now, Therefore, objection are invited from the general public that if anyone has any objection regarding the registration of marriage of above named applicants, they should appear before the undersigned on or before 19-04-2023 either personally or through their authorized agent/pleader.

In the event of their failure to do so, orders shall be passed *ex-parte* for the registration of marriage without affording any further opportunity of being heard.

Issued today on 20th day of the March, 2023 under my hand and seal of the court.

Seal.

Sd/-

(NISHANT TOMAR H.A.S.),
Sub-Divisional Magistrate,
Rampur Bushahr, District Shimla (H. P.).

**In the Court of Shri Nishant Kumar, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Smt. Rekha Devi w/o Sh. Kuldeep, r/o Village Kiargiri, P.O. Jathia Devi, Tehsil & District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Smt. Rekha Devi w/o Sh. Kuldeep, r/o Village Kiargiri, P.O. Jathia Devi, Tehsil & District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of birth of her son named—Devansh in the record of Registrar, Birth and Death, in Gram Panchayat Baggi, Shimla (H.P.).

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Devansh	Son	29-06-2013

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name & date of birth of above named in the record of Registrar, Birth and Death, in Gram Panchayat Baggi, Shimla (H.P.) may file their claims/objections in the court on or before one month of publication of this notice in Govt. Gazette failing which necessary orders will be passed.

Issued today on 25-03-2023 under my signature and seal of the court.

Seal.

Sd/-

Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).

**In the Court of Shri Nishant Kumar, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Smt. Rekha Devi w/o Sh. Kuldeep, r/o Village Kiargiri, P.O. Jathia Devi, Tehsil & District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Smt. Rekha Devi w/o Sh. Kuldeep, r/o Village Kiargiri, P.O. Jathia Devi, Tehsil & District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of birth of her daughter named—Prijuul in the record of Registrar, Birth and Death, in Gram Panchayat Baggi, Shimla (H.P.).

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Prijuul	Daughter	02-11-2008

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name & date of birth of above named in the record of Registrar, Birth and Death, in Gram Panchayat Baggi, Shimla (H.P.) may file their claims/objections in the court on or before one month of publication of this notice in Govt. Gazette failing which necessary orders will be passed.

Issued today on 25-03-2023 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).*

**In the Court of Shri Nishant Kumar, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Sh. Prakash s/o Sh. Bihari Lal, r/o Village Mandri, P.O. Chalahal, Sub-Tehsil Dhami, Tehsil & District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Sh. Prakash s/o Sh. Bihari Lal, r/o Village Mandri, P.O. Chalahal, Sub-Tehsil Dhami, Tehsil & District Shimla, Himachal Pradesh has filed an application alongwith affidavit in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of birth of her son named—Harshit in the record of Registrar, Birth and Death, in Gram Panchayat Chalahal, Shimla (H.P.).

Sl. No.	Name of the family member	Relation	Date of Birth
1.	Harshit	Son	03-04-2020

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name & date of birth of above named in the record of Registrar, Birth and

Death, in Gram Panchayat Chalahal, Shimla (H.P.) may file their claims/objections in the court on or before one month of publication of this notice in Govt. Gazette failing which necessary orders will be passed.

Issued today on 05-04-2023 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).*

**In the Court of Shri Nishant Kumar, Sub-Divisional Magistrate, Shimla (R),
District Shimla (H. P.)**

Sh. Nandi Ram s/o Lt Sh. Kali Ram, r/o Village Khayari, P.O. Jubberhatti, Tehsil & District Shimla, Himachal Pradesh.

Versus

General Public

. . Respondent.

Whereas Sh. Nandi Ram s/o Lt Sh. Kali Ram, r/o Village Khayari, P.O. Jubberhatti, Tehsil & District Shimla, Himachal Pradesh has filed an application in the court of undersigned under section 13(3) of the Birth & Death Registration Act, 1969 to enter date of death of his mother named—Lt Smt. Narayani Devi w/o Lt Sh. Kali Ram in the record of Secy., Birth and Death, in Gram Panchayat Dhamoon, Shimla .

Sl. No.	Name of the family member	Relation	Date of Death
1.	Lt Smt. Narayani Devi	Mother	01-01-1970

Hence, this proclamation is issued to the general public if they have any objection/claim regarding to enter the name & date of death of above named in the record of Gram Panchayat Dhamoon, Shimla may file their claims/objections on or before one month of publication of this notice in Govt. Gazette in the court failing which necessary orders will be passed.

Issued today on 04-04-2023 under my signature and seal of the court.

Seal.

Sd/-

*Sub-Divisional Magistrate,
Shimla (R), District Shimla (H.P.).*

In the Court of Executive Magistrate (Naib-Tehsildar) Baddi, District Solan (H.P.)

Case No. : 05/2023

Date of Institution : 17-03-2023

Smt. Sheetal Rana w/o Sh. Mahipal Singh, r/o Flat No. 103, Kachnar D1 Omaxe Parkwood Baddi, Tehsil Baddi, District Solan (H.P.).

Versus

General Public : through M.C. Baddi, Tehsil Baddi, District Solan (H.P.).

Application under section 13(3) of H.P. Birth and Death Registration Act, 1969.

Smt. Sheetal Rana w/o Sh. Mahipal Singh, r/o Flat No. 103, Kachnar D1 Omaxe Parkwood Baddi, Tehsil Baddi, District Solan (H.P.) has filed an application under section 13(3) of the Birth & Death Registration Act, 1969 stating therein that her daughter was born on 09-11-2008 at Flat No. 103, Kachnar D1 Omaxe Parkwood Baddi, Tehsil Baddi, District Solan (H.P.) but her birth could not be entered in the records of M.C. Baddi, Tehsil Baddi, District Solan H.P. within stipulated period. He prayed for issuing necessary orders to the M.C. Baddi, Tehsil Baddi, District Solan (H.P.) for entering the same.

Therefore, by this proclamation, the general public is hereby informed that any person having any objection regarding registering the birth of Anandi Rawat may file his objection in this court on or before 17-04-2023, failing which no objection shall be entertained.

Given under my hand and seal on this 17-03-2023.

Seal.

Sd/-
*Executive Magistrate (Naib-Tehsildar),
Baddi, District Solan (H. P.).*